FINAL NORTHERN AVENUE WATERFRONT DEVELOPMENT PLAN AMENDMENT

PARCEL K
NORTHERN AVENUE
SOUTH BOSTON, MA

Submitted to:

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Section 1.0

Introduction

1.0 INTRODUCTION – FINAL NORTHERN AVENUE WATERFRONT DEVELOPMENT PLAN AMENDMENT

The Massachusetts Port Authority (Massport) is pleased to submit this Final Northern Avenue Waterfront Development Plan Amendment (the Final Amendment) to the Massachusetts Department of Environmental Protection (MassDEP). This Final Amendment has been prepared and submitted in accordance with the terms and conditions of the March 15, 2001 "Memorandum of Understanding between Massachusetts Port Authority and the Commonwealth of Massachusetts Department of Environmental Protection" (the MOU). A copy of the MOU is included as Appendix A of this document.

The Final Amendment adopts two changes to the 2001 Northern Avenue Waterfront Development Plan (the Northern Avenue WDP); specifically,

1. The re-introduction of residential as an allowed use on Parcel K-1, and

2. A return to an allowed building height on Parcel K-2 of 130 feet within the Northern Avenue WDP Area and 140 feet on the remainder of the parcel (as measured from "Grade to Roof of Highest Occupied Floor"[1]).

These changes have been adopted with the intent of encouraging the development of Parcel K of the Northern Avenue WDP Area in a manner that,

- recognizes and is informed by the prior planning efforts Massport has conducted for this area,

- protects and preserves the working maritime Port of Boston by way of compatible design, and through the generation of durable, long-term revenue streams that can be used to support Massport's maritime and port operations,

- continues to recognize the transitional setting of Parcel K in relation to its waterfront location next to Massport Haul Road, and

- incorporates the experience gained as the area has evolved subsequent to the initial development of the Northern Avenue WDP and the completion of earlier planning studies.

As described herein, the purpose and potential benefits of the Final Amendment are multiple and focus on supporting Massport's mission and preserving the working maritime Port of Boston. Throughout the various planning processes, a primary purpose for

[1] Commonwealth Flats Development Area Final EIR, December 15, 2000, Figure 2-3, "*Maximum Building Height*" (page 2-4) and Tables "Parcel K-1" and "Parcel K-2" (pages 2-14 and 2-15).

development in the Commonwealth Flats Development Area (CFDA) and the Northern Avenue WDP Area, and therefore Parcel K, has been the generation of durable, long-term revenue streams that can be used to support Massport's maritime and port operations.

1.1 Public and Agency Review of the Northern Avenue Waterfront Development Plan Amendment

In accordance with the MOU, a "Draft Northern Avenue Waterfront Development Plan Amendment" (the Draft Amendment) was submitted to MassDEP on June 30, 2014. Notice of the availability of the Draft Amendment was published in the *Environmental Monitor* and the *Boston Herald* on July 23, 2014, which initiated an extended 49-day public review period that closed on September 10, 2014. In addition, public notice of the availability of the Draft Amendment was circulated to City and State agencies and officials, abutters and nearby property owners, and area interest groups.

Also in accordance with the MOU, on July 22, 2014 a meeting was held between Massport, MassDEP, and the Massachusetts Office of Coastal Zone Management (MCZM) to review the Draft Amendment for consistency with applicable state agency plans and polices. In response to questions raised at this meeting, a Supplemental Information document was prepared and circulated to the reviewing agencies on August 15, 2014.

A public meeting on the Draft Amendment was held on August 20, 2014 at the MassDEP offices at One Winter Street, Boston. Subsequent to the meeting, and prior to the close of the public comment period, four comment letters were received on the Draft Amendment. Three letters were received from abutters to the Northern Avenue WDP area, all of which expressed strong support for the Draft Amendment. A fourth letter was received from an area interest group that commented upon the potential for development of the site regardless of the changes proposed in the Draft Amendment. No formal comments on the Draft Amendment were received from local, state, or federal agencies. Written responses to the four comment letters were submitted to MassDEP by Massport on October 10, 2014. Copies of these letters and responses are included in Appendix B of this document.

In accordance with the MOU, notice of the availability of this Final Northern Avenue WDP Amendment will be published by MassDEP in the *Environmental Monitor*.

1.2 Northern Avenue Waterfront Development Plan – Area Context

Historically, much of the South Boston waterfront was created as filled land for maritime industrial purposes. In recent decades, as cargo technology has evolved (principally the adoption of shipping containers) and as the demand for land from certain water-related industries has decreased, parcels located in the western portion of the South Boston peninsula and closer to downtown Boston have seen less demand for maritime industrial uses. This has been evidenced, in part, by their relatively recent use as surface parking supporting the growing financial district.

The Central Artery/Tunnel project created fundamental changes in how the region's highway system is accessed from this area, including nearly instant access to Boston-Logan International Airport, the Massachusetts Turnpike, and the north/south interstate highway system. The MBTA Silver Line project similarly connected the South Boston district to the City's larger mass transit system. Aside from dramatically increasing the area's suitability for commercial development by fundamentally changing its access characteristics, these public projects required extensive physical planning to accommodate the new highway access points and the new transit stops. The City of Boston and Massport were principal parties in planning the street network and in parceling Massport's property holdings in South Boston.

As part of this planning process, Massport has taken great care to plan for commercial development to occur in a manner that recognizes and supports the maritime industrial uses in the eastern portion of the South Boston peninsula. These maritime industrial businesses depend on an efficient roadway system to provide convenient access for deliveries and for customers. Massport Haul Road (which was designed as part of the planning for the overall roadway network), together with the South Boston Bypass Road, is a vital part of the spine of dedicated truck access that connects these businesses to the interstate highway system and the region. As an overarching land use policy, Massport Haul Road was considered to be the geographical limit for commercial development and to serve as a boundary of sorts between the emerging commercial land uses to the west and the predominantly maritime industrial uses in the Boston Marine Industrial Park (BMIP) to the east. These maritime uses include, among others, seafood processors, distributors, and wholesalers, warehouses, ship repair and cruise operations at Cruiseport Boston.

Master planning and permitting carried out by Massport between 1998 and 2001, and in particular the Northern Avenue WDP, identified its properties located west of Massport Haul Road, including Parcel K, as being suitable for relatively intense commercial development. By virtue of its location along the "boundary" between commercial development and the maritime industrial areas, Parcel K at the eastern end of the Northern Avenue WDP Area was identified as playing a special role in mediating the transition between commercial development to the west and maritime industrial uses to the east. It is this parcel that is the focus of the Final Northern Avenue WDP Amendment adopted herein.

1.3 The Northern Avenue Waterfront Development Plan

The Northern Avenue WDP was an early product of the CFDA planning processes conducted by Massport in the late 1990s and early 2000s. These CFDA planning processes included the filing of an Expanded Environmental Notification Form (EENF) in March of 1999, a Draft Environmental Impact Report (Draft EIR) in January of 2000, and a Final Environmental Impact Report (Final EIR) in December of 2000, all under the Massachusetts Environmental Policy Act (MEPA).

As noted in the March 1999 EENF for the CFDA, certain portions of the CFDA Plan area are located within filled tidelands subject to Chapter 91 regulation and licensing. These lands, identified in the EENF as including the Northern Avenue WDP Area, encompass those portions of the CFDA lying within 250 feet of the current Boston Harbor shoreline, but landward of the Northern Avenue public right-of-way, and outside of the South Boston Designated Port Area (DPA). The approximate location and boundaries of the Northern Avenue WDP Area are shown on Figure 1-1, *Northern Avenue WDP Area Locus - USGS Map*, Figure 1-2, *Northern Avenue WDP Area Locus – Vertical Aerial Photograph*, and Figure 1-3, *Northern Avenue Waterfront Development Plan Area*, the latter being a copy of Figure 2 from the 2001 Northern Avenue WDP.

The CFDA Plan recognized that the portion of the CFDA located within Chapter 91 licensing jurisdiction would potentially be subject to a different set of regulatory requirements than those portions of the CFDA located outside of Chapter 91 licensing jurisdiction, and therefore would require a set of planning guidelines beyond those of the CFDA in general. In the March 31, 2000 Certificate on the CFDA Draft EIR, the Secretary of Environmental Affairs (now Energy and Environmental Affairs) requested that Massport and MassDEP prepare (1) a draft Memorandum of Understanding regarding the Chapter 91 licensing of certain projects on jurisdictional Massport properties, and (2) a Preliminary Waterfront Development Plan for the Northern Avenue area, and that these documents be filed together as a Chapter 91 Notice of Project Change for review as part of the CFDA process. The Chapter 91 Notice of Project Change was submitted to the MEPA Office by Massport on October 16, 2000. This process culminated in the signing of a Final MOU between Massport and MassDEP on or about March 15, 2001, and the issuance of a Final Northern Avenue WDP on August 1, 2001. A copy of the MOU between Massport and MassDEP is included in Appendix A.

1.4 Development and Amendment of Waterfront Development Plans

The MOU established a process whereby Massport may develop and adopt a Waterfront Development Plan for certain Massport properties that, once approved, can and shall be used by Massport and MassDEP in connection with the Chapter 91 licensing of projects undertaken within the specific Waterfront Development Plan area. Among other aspects, such Waterfront Development Plans may propose specific substitutions in lieu of the standard Chapter 91 licensing conditions, provided the Waterfront Development Plan demonstrates and/or provides offsetting benefits.

Article 3 of the MOU describes a number of specific elements which must be addressed in a Waterfront Development Plan in order to identify the "*criteria, performance standards and guidelines for development applicable to Projects*" to be licensed under Chapter 91 within a plan area. These elements include:

- Planning Analysis
- Proposed Uses
- Design Requirements
- Public Benefits for Non-Water-Dependent Project Impacts
- Offsets
- Implementation Program, and
- Consistency with Coastal Zone Management Policies

Each of these elements was reviewed and/or otherwise developed in the 2001 Northern Avenue WDP for the "*Build Condition*" as envisioned for the area and described in the Draft and Final EIRs for the 2001 CFDA Plan. This analysis demonstrated that the development anticipated in the CFDA for the Northern Avenue WDP Area was compliant with Chapter 91, with the exception of height. In response, the Northern Avenue WDP adopted a single substitution allowing building heights in the Northern Avenue WDP to penetrate the height limitations imposed by the Chapter 91 regulations. As mitigation, the Northern Avenue WDP adopted an offset whereby one square foot of open space would need to be set aside for every two square feet of net new shadow caused by a proposed building height and massing as compared to the Chapter 91 baseline, licensable condition.

Finally, in anticipation of the potential for evolving improvements to the local environment, Massport and MassDEP included a method for amending a Waterfront Development Plan in the MOU. Specifically, Article 3 of the MOU allows for amendments to a Waterfront Development Plan, subject to the same review and approval requirements as would be required "*for the initial approval for such plan*." The changes contained in the Final Amendment presented herein are specific to uses and design elements on a portion of Parcel K at the eastern end of the Northern Avenue WDP Area, and have been adopted in the interest of applying the knowledge gained in the development of the Northern WDP Area to the development of this final parcel of the Northern Avenue WDP Area.

1.5 Chapter 91 Waterways Licensing

Per Article 2, *General Provisions*, of the MOU, projects not otherwise exempt from Section 2.2, *Projects Not Requiring a License*, of the MOU, or from the applicable provisions of Chapter 91, shall be required to obtain a Chapter 91 license in accordance with Article 4, *Licensing of Special Allowed Uses*, or Article 5, *Licensing for Non-Exempt Projects*, of the MOU. Per Section 5.2, *Application*, "The application for a license under this MOU shall be submitted to DEP by Massport or its tenant on Forms provided by the DEP, and meeting the requirements of 310 CMR 9.11 of the Regulations."

G:\Projects2\MA\Boston\3362\WDP_Area\1-1_usgs.mxd

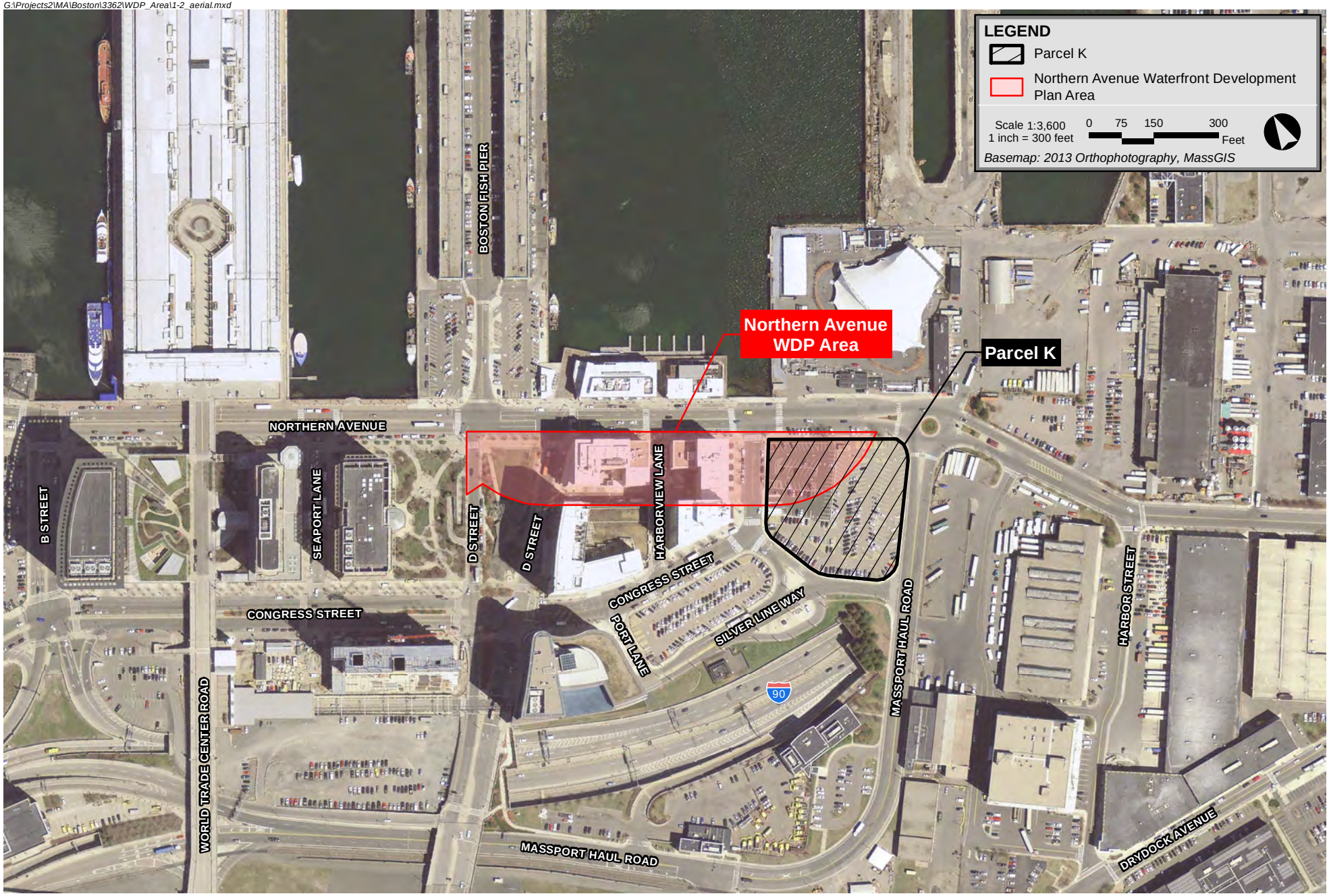
Parcel K Boston, Massachusetts

Epsilon Associates Inc.

Figure 1-1

Northern Avenue WDP Area Locus - USGS Map

G:\Projects2\MA\Boston\3362\WDP_Area\1-2_aerial.mxd

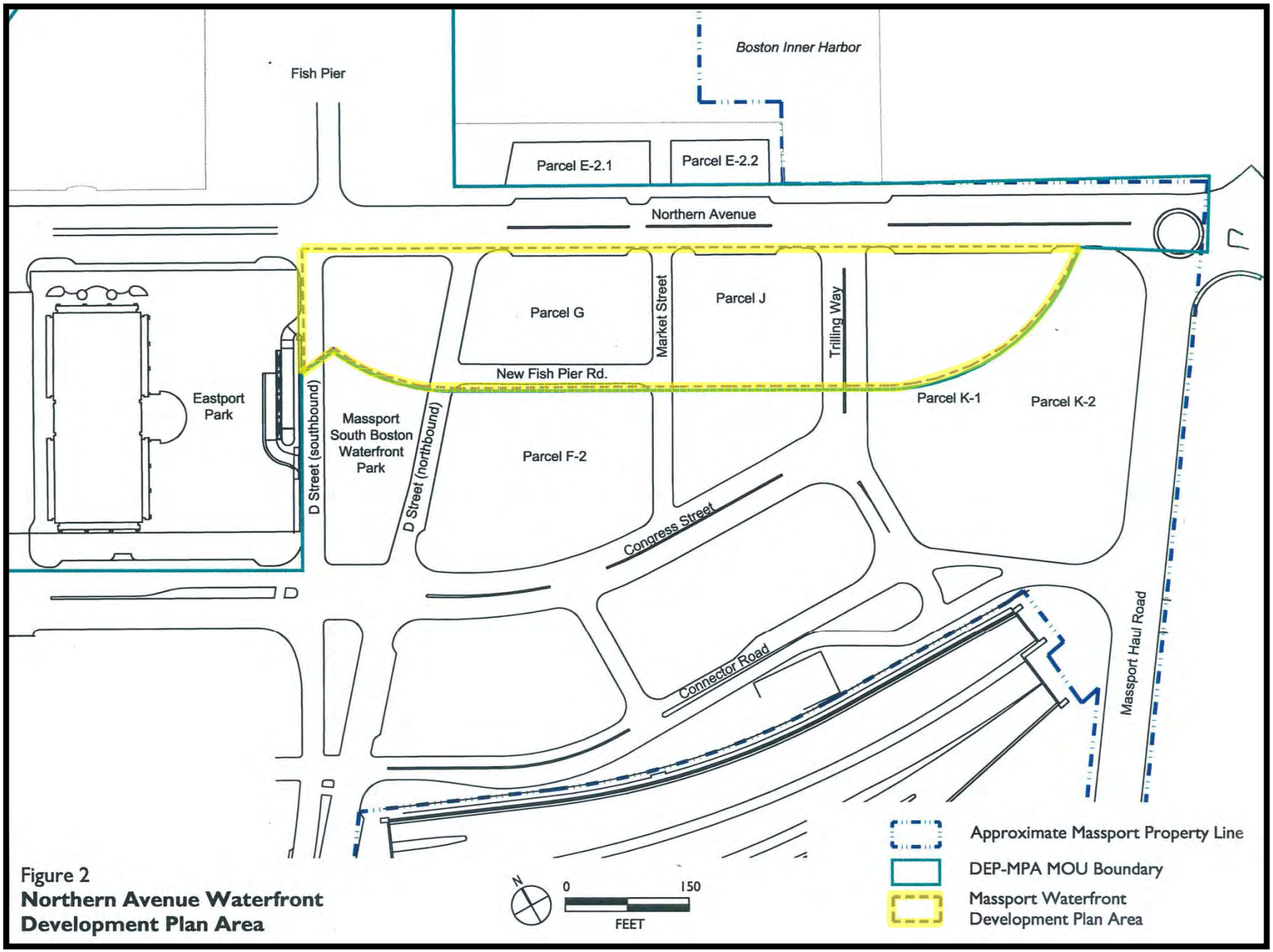


Parcel K Boston, Massachusetts

Epsilon Associates Inc.

Figure 1-2

Northern Avenue WDP Area Locus - Vertical Aerial Photograph



Parcel K **Boston, Massachusetts**

Source: Final Northern Avenue Waterfront Development Plan, 8/1/2001 (Massachusetts Port Authority)

Epsilon ASSOCIATES INC.

Figure 1-3

Reproduction of Figure 2 of the 2001 Northern Avenue WDP – Northern Avenue WDP Area

Final Northern Avenue Waterfront Development Plan Amendment Analysis

2.0 FINAL NORTHERN AVENUE WATERFRONT DEVELOPMENT PLAN AMENDMENT ANALYSIS

The March 15, 2001 MOU between Massport and MassDEP authorized the development and adoption of Waterfront Development Plans for certain Massport properties in South Boston, including the Northern Avenue WDP Area. Article 3 of the MOU describes the specific elements which must be addressed in the preparation of a Waterfront Development Plan, or in the amendment of an existing Waterfront Development Plan.

The Final Northern Avenue WDP Amendment adopts two changes to the existing 2001 Northern Avenue WDP. These include:

1. The re-introduction of residential as an allowed use on Parcel K-1, and

2. A return to an allowed building height on Parcel K-2 of 130 feet within the Northern Avenue WDP Area and 140 feet on the remainder of the parcel (as measured from "Grade to Roof of Highest Occupied Floor").

Article 3 of the Massport/MassDEP MOU describes a number of specific elements which must be addressed in a Waterfront Development Plan in order to identify the "*criteria, performance standards and guidelines for development applicable to Projects*" to be licensed under Chapter 91 within a plan area. These elements include:

- Planning Analysis
- Proposed Uses
- Design Requirements
- Public Benefits for Non-Water-Dependent Project Impacts
- Offsets
- Implementation Program, and
- Consistency with Coastal Zone Management Policies

The following sections review the Final Amendment in relation to each of these elements.

2.1 Planning Analysis

The South Boston waterfront area has been the subject of several comprehensive planning efforts. These include the BRA *South Boston Waterfront Public Realm Plan* (February 1999), the Massport *Commonwealth Flats Strategic Plan* (May 2000), the *Commonwealth Flats Development Area Draft and Final Environmental Impact Report* (December 16, 2000), the *Final Northern Avenue Waterfront Development Plan* (August 1, 2001) and the

associated "*Memorandum of Understanding between Massachusetts Port Authority and The Commonwealth of Massachusetts Department of Environmental Protection*" (March 15, 2001). The latter two planning documents were created by Massport as it planned for mixed-use commercial development on its property within the South Boston waterfront area.

In addition to the above, the Northern Avenue WDP Area, and more specifically, Parcel K of the Northern Avenue WDP, has been the focus of analyses specific to the changes adopted herein. These include the June 30, 2014 *Draft Northern Avenue Waterfront Development Plan Amendment, Parcel K, Northern Avenue, South Boston, Massachusetts*, and the August 15, 2014 *Supplemental Information, Draft Northern Avenue Waterfront Development Plan Amendment, Parcel K, Northern Avenue, South Boston, Massachusetts.*

These documents have identified the potential for such development to generate substantial economic benefit to Massport through ground lease payments, a significant and dependable revenue stream that supports and protects the working port and the infrastructure it requires to operate successfully. Additionally, these planning documents, filings, and certificates have all articulated a goal of increasing the amount of residential, retail, hotel, and other commercial uses in the district, and to have these uses be located, designed, and executed in a manner that is compatible with and supports the needs of the working port and associated trucking activity.

2.1.1 Parcel K as a Transitional Site

In previous plans, particularly Massport's CFDA planning, Parcel K was defined as a transitional site between the commercial development to the west and the maritime industrial uses to the east, including seafood processors and distributors, wholesalers, warehouses, ship repair and Cruiseport Boston operations. Parcel K was further subdivided into Parcels K-1 to the west and Parcel K-2 to the east, with the use of Parcel K-1 identified as mixed-use, including residential use, and the use of Parcel K-2 identified as industrial, commercial, or service-oriented businesses, with residential use prohibited. Parcel K-2, which abuts Massport Haul Road, was specifically identified as the appropriate site for an above-grade parking garage with a Massport maintenance facility or other light industrial uses. The potential for an above-grade garage was also the product of Massport planning, which had sufficiently evolved to identify, within the context of an approved overall parking ratio, those development parcels within the CFDA that could not self-park and those parcels that presented opportunities for providing a public parking supply beyond individual the parcel's parking needs.

In the January 29, 2001 Certificate on the CFDA Final EIR, the Secretary of Environmental Affairs (now Energy and Environmental Affairs) asked Massport to "*re-examine the appropriate types and intensities of truly transitional uses allowable on these parcels* [Parcels K-1 and K-2], *prior to the completion of upcoming MEPA review of any CFDA parcels within Chapter 91 jurisdiction.*" In contrast to the later prohibition of residential use

on Parcel K-1, the Certificate also noted that the aggregate build-out described in the CFDA EIR would fall below the City's target for residential use in the district, and asked that Massport work with the City in satisfying "its district-wide land use goals."

Massport addressed the Secretary's concerns in an October 1, 2001 letter report to the Secretary entitled "Transitional Uses on Parcels K-1 and K-2." This letter presented, in tabular form, the results of alternatives analyses of Parcels K-1 and K-2 that included Office, Hotel, Ancillary Retail/Restaurant, Residential, Parking, Light Industrial/Warehouse, and Massport District Maintenance/Public Safety uses. The 2001 Final Northern Avenue WDP replicated this table and expanded upon the alternative use discussion (a copy of the table is included in Appendix C of this document and discussed in further detail in Section 3.2).

On December 14, 2001, following the submittal of the above alternatives analysis, then MEPA Director, Jay Wickersham, issued a "Special Procedure Update and Clarification of Conditions" letter to Massport stating, "In Secretary Durand's Certificate on the Final Environmental Impact Report (FEIR) for the Commonwealth Flats Development Area (CFDA)(EOEA #11882), he set forth four specific conditions for additional actions or information on the part of the proponent, the Massachusetts Port Authority (Massport). …As described below, I find that all four conditions have been satisfied." These four conditions included the above-referenced alternatives examination of the "Transitional Uses on Parcels K-1 and K-2." Copies of the January 29, 2001 Certificate on the FEIR and the above referenced "Update and Clarification" letter from the MEPA Director Wickersham to Massport are included as Appendix D of this document.

The above-grade parking garage concept described above was one result of this process, as was the understanding that residential uses would not now be allowed on Parcel K-1, as was already the case for Parcel K-2.

2.1.2 Residential Use on Parcel K

As presented in the CFDA Final EIR, residential development was originally intended to be one of the allowed uses on the western half of Parcel K (Parcel K-1, away from the Massport Haul Road). Structured parking and other ancillary uses were intended to be allowed uses on the eastern half of the site (Parcel K-2), abutting Massport Haul Road. In response to concerns by others at the time, Massport subsequently agreed to a prohibition on residential use on any part of Parcel K and also to a reduction in the maximum allowed building height next to Massport Haul Road. These concessions were granted as a means to mitigate the then-perceived future potential impacts on the working port.

The agreement by Massport to remove residential use from consideration on Parcel K was made in 2001, long before the adjacent Park Lane Seaport Apartments had been constructed and occupied. At that time, the redevelopment of the CFDA had only barely begun. No new, stand-alone residential development had yet occurred anywhere in the South Boston peninsula, on or off of Massport property (excluding renovations of existing

Fort Point Channel buildings). Without any such development at that time, residential use was perceived by some as an untested idea that might be incompatible with the working port in general and with the heavy trucking associated with shipping in particular. The genesis of this concern was related to the perception that residential uses have a high sensitivity to the visual and noise impacts of a working port, particularly with respect to trucking activities, which were considered by some to be incompatible with residential use in the CFDA.

When the first residential project was constructed on Massport land, Park Lane Seaport Apartments, Massport imposed specific restrictions through its ground lease to mitigate potential conflict between the residential use and port- and aviation-related activities, including trucking. These restrictions remain in effect and include:

- A prohibition on any residential uses being located on the first floor;
- A maximum apartment lease term of 2 years;
- A requirement that all residential spaces be constructed to have an interior noise level of not more than 45 dBA (Ldn); and
- A requirement that all apartment tenants sign, as part of their apartment rental lease, a written acknowledgement of the location and proximity of the apartment being leased relative to the working port, including the Fish Pier, the adjacent truck routes, and Logan International Airport, and acknowledging that the working port and the airport operate on a 24 hour, 365 day basis and may emit noise and other impacts.

The experience with Park Lane Seaport Apartments, which opened in 2005, has been overwhelmingly positive. To the best knowledge of Massport, no apartment resident has filed a complaint regarding noise, be it from truck or aircraft activity.

Since 2001, development of the South Boston waterfront has accelerated, with several residential developments having been completed or currently under construction. Although this has coincided with a national trend towards urban living, part of the attraction of the South Boston waterfront as a residential address is the unique, mixed-use nature of the neighborhood. These attractions include the fishing vessels at the Fish Pier, the proximity to workplaces in the BMIP, the Seaport District or the Financial District, the proximity of Logan International Airport and the Cruiseport Boston terminal, the presence of a variety of restaurants, the views of the harbor and the activities which occur thereon, and/or the views of the airport and the Boston Harbor Islands. Residents who voluntarily move to this area do not have negative or entrenched perspectives of the working port or the airport as detracting from their quality of life. As other developments such as Liberty Wharf and the Renaissance Boston Waterfront Hotel have been completed, the vision of a vibrant, mixed-use district has become a reality, and the mitigation measures implemented

by Massport to protect the working port and address concerns regarding conflicts between residential uses and port related uses, combined with the demographic changes that have occurred, have proven to be effective.

The existing residential, hotel and retail development within the Northern Avenue WDP Area (indeed, within the entire CFDA and beyond) has not had an adverse effect on the industrial traffic on Massport Haul Road. Meanwhile, the implementation of interior noise attenuation measures at the residential and hotel developments within the CFDA (including the Northern Avenue WDP Area) has resulted in residential uses being successfully integrated into the area and, indeed, contributing to the vitality, desirability, and sustainability of the district as a whole. The same mitigation measures described above will be required of any new project on the Parcel K site, with the 45dBA (Ldn) noise standard applied to all living spaces, be they within a hotel or residential development (Massport imposes the same interior noise standard of 45 dBA (Ldn) on hotel projects built on its land as that for residential units).

The introduction of mixed-use development into the Northern Avenue WDP Area has defined the urban fabric of the area and offers office space for businesses, residential apartments for residents, hotels supporting the visitor economy, and restaurant-dominated retail which acts as an amenity for every user class. The residential apartment component affords the ability for residents to utilize public transportation, to bicycle, or to walk to work in the BMIP, the Seaport District or the Financial District, thereby reducing the level of vehicular traffic that might otherwise be generated from this scale of development. This compatible mix of uses will continue to support the Northern Avenue WDP and surrounding districts without negatively impacting the working port or local truck routes.

The re-introduction of residential use on Parcel K-1 as established herein is a direct result of the positive experience with residential uses within the Northern Avenue WDP Area, the CFDA and in the entire South Boston waterfront, as described above. It is also the result of the successfully implemented and demonstrated protections against impacts on residential development from Port-related activities. The assessment of Residential use conducted for the Final Northern Avenue WDP Amendment is presented in Section 3.0.

2.1.3 Building Heights

The Northern Avenue WDP established building heights throughout the Northern Avenue WDP Area that exceed the Chapter 91 regulatory standards for buildings on filled tidelands in proximity to the water's edge. As discussed below, the existing Northern Avenue WDP establishes a substitution and offset process that mitigates the potential impacts resulting from increased building heights.

This Final Amendment allows for residential development on Parcel K-1 as originally envisioned during the CFDA MEPA process, and for a return to an allowed building height on Parcel K-2 of 130 feet within the Northern Avenue WDP Area, and 140 feet on the

remainder of the Parcel (as measured from grade to the roof of highest occupied floor), as also originally envisioned during the CFDA MEPA process. These heights, coupled with the generous buffer zone created by the width of Massport Haul Road and the Ted Williams Tunnel, will maintain an appropriate and thoughtful urban transition between the Northern Avenue WDP Area and the BMIP, and more specifically, between Parcel K and the BMIP.

As the Northern Avenue WDP Area has been built out, increasing the allowable building heights on Northern Avenue have been demonstrated to be both appropriate and successful, and were a driving force in the re-evaluation of the 100-foot height limit on Parcel K-2. While slight height reduction was originally instituted in response to assumptions that a lower structure would create a transitional relationship with the industrial buildings within the BMIP, the subsequent experience strongly suggested that this assumption be re-evaluated. Indeed, it is of note that the "*Commonwealth Flats Urban Design & Public Realm Guidelines*" included as Appendix D of the 2001 Northern Avenue WDP anticipates building heights in the Northern Avenue WDP Area of 130 to 250 feet, does not reference the 100-foot limitation on Parcel K-2, and does not anticipate a conflict with the built environment of the area.

The assessment of building heights conducted for the Final Northern Avenue WDP Amendment is included in Section 4.0.

2.1.4 Planning Analysis Summary

The re-evaluation of the land use controls and building height limitations on Parcel K creates the opportunity for active, appropriate and necessary income-generating development uses of this parcel, including hotel, retail and office in lieu of above-grade structured parking. While an above-grade parking garage on Parcel K-2 was once seen as an appropriate transition between the Northern Avenue WDP Area and the maritime industrial area to the east, the experience of the past 10 to 15 years has clearly demonstrated that the benefits provided by a thoughtfully-designed mixed-use development will significantly outweigh the negative impacts of an above-grade parking garage at this location. Such development better complements the overall development pattern in the South Boston waterfront and provides additional housing and hotel rooms supporting the BMIP, the Boston Convention and Exhibition Center, and Boston's visitor economy, including those utilizing the Cruiseport. In addition, the City has more recently discouraged above-grade parking structures for reasons related to urban design, and in the interest of encouraging the vitality of street fronts and neighborhoods.

In contrast to a barrier-creating above-grade garage, the changes in the Final Amendment increase the economic viability of a below-grade parking garage at Parcel K. The Final Amendment also allows for the development of Parcel K in a manner that complements the existing and successful mixed-use development pattern of the area and enables a more thoughtfully designed termination to the zone of commercial development while providing significant long-term revenue streams to Massport via ground lease payments, which will

help finance maritime operations and capital improvements. The potential for the placement of parking below grade at this location is deemed to be a much better outcome in terms of urban design and place-making, and more consistent with Massport and City goals for this area. A mixed-use development on Parcel K that potentially includes residential use on Parcel K-1 as envisioned throughout the CFDA MEPA process, will allow for the introduction of a vibrant development that enlivens and contributes to the South Boston waterfront and surrounding community to the benefit of the port and area workers, residents, and visitors.

2.2 Proposed Uses

This Final Amendment includes the addition of residential as an allowed use on Parcel K-1 of the Northern Avenue WDP Area. Such use was envisioned throughout the CFDA planning process, but was removed from consideration in the Northern Avenue WDP. The reasons for this change are detailed above, and were generated by assumptions that such use would be incompatible in an area seen as transitional to the marine industrial environment. Experience with actual residential development in this area has shown that, with targeted mitigation measures, the introduction of residential use in areas adjacent to the marine industrial environment of Boston Harbor, as well as proximate to Logan International Airport, has been highly successful without adverse effect on the working port.

2.3 Public Benefits for Nonwater-Dependent Uses

The Final Amendment allows for re-development of Parcel K in a manner that:

- recognizes and is informed by the prior planning efforts Massport has conducted for this area,
- protects and preserves the working maritime Port of Boston by way of compatible design, and through the generation of durable, long-term revenue streams that can be used to support Massport's maritime and port operations,
- continues to recognize the transitional setting of Parcel K in relation to its waterfront location next to Massport Haul Road, and
- incorporates the experience gained as the area has evolved subsequent to the initial development of the Northern Avenue WDP and the completion of earlier planning studies.

Such redevelopment will, in turn, provide a significant durable, long-term revenue stream to Massport via ground lease payments to finance maritime operations and capital improvements.

The Final Amendment expands the future development potential of Parcel K which, in turn, expands the potential benefits of the Final Amendment, both direct and indirect, to include the following:

- Increased long-term lease payments and other revenues to Massport to finance and support additional maritime improvements and operations;
- Introduction of additional commercial and retail amenities to the maritime industries of the BMIP;
- Creation of significant numbers of new construction and permanent jobs;
- Construction of new, below-grade public parking facility consistent with the CFDA planning requirements;
- Increase supply of rental housing within walking distance for workers in the BMIP, the Seaport District and/or the Financial District;
- Contribution to affordable rental housing in accordance with the Inclusionary Development Program (IDP) approved by the BRA;
- Creation of flex office space in direct support of the City's Innovation District initiative and in potential support of the marine industries of the BMIP and Massport's industrial holdings;
- Introduction of public restaurant spaces proximate to the working port and BMIP;
- Introduction of hotel(s) supporting the commercial, business and visitor economies of the area and the City, and contributing to the supply of much needed hotel rooms within walking distance of the Boston Convention and Exhibition Center;
- Creation of additional open spaces available to the public, some with views of the Harbor; and
- Improvement and activation of the street and pedestrian environment.

2.4 Design Requirements

The expanded development potential of Parcel K facilitated by the Final Amendment will build upon and enhance Massport's plans for the 30-acre CFDA and the City of Boston's long-standing vision for the South Boston waterfront. The Final Amendment makes more viable the planning goals described in the CFDA Plan and the more recent BRA Public Realm Plan and the Innovation District plan by supporting the potential for a 24-hour neighborhood with a synergy between residential, hotel, office, commercial, public, and retail/restaurant uses. The modest building height increase allowed on Parcel K-2 will be

well within the "*Commonwealth Flats Urban Design & Public Realm Guidelines*" included as Appendix D of the Northern Avenue WDP, which anticipated building heights in the CFDA of 130 to 250 feet, and any development of Parcel K will continue to be required to comply with the full range of building design guidelines presented in the *Guidelines* document.

The design of any and all future project elements proposed for Parcel K, including any residential structure on Parcel K-1, will be informed by the goals of the Northern Avenue WDP and the design parameters of the above-referenced "*Commonwealth Flats Urban Design & Public Realm Guidelines*." The overarching intent will be to enhance the waterfront and pedestrian streetscape as a vibrant destination for Boston residents, workers and visitors in a manner consistent with the needs of the working port. Meanwhile, utilization of the height increase on Parcel K-2 will be conducted in compliance with the height substitution and offset requirements described in the Northern Avenue WDP and reviewed below and in Section 4.0.

2.5 Substitutions and Offsets

To the degree that a Waterfront Development Plan allows a use or condition that is not allowable under Chapter 91, the Waterfront Development Plan must propose a "substitution" for the existing Chapter 91 regulation, and a mitigating "offset." The existing Northern Avenue WDP includes a single substitution for the Chapter 91 regulations; specifically, an allowance for buildings to penetrate the height limit established by the Chapter 91 regulations. In compensation for this allowance, the Northern Avenue WDP offers an offset whereby additional public open space must be provided for any net new shadow created by a non-Chapter 91-compliant building(s).

2.5.1 Residential Use

The Chapter 91 regulations (310 CMR 9.00) allow residential use in filled tidelands, provided that such use does not occur within a water-dependent use zone, or on the ground floor within 100 feet of the current shoreline. Parcel K does not include a water-dependent use zone, and the buildable portion of Parcel K is located more than 100 feet from the current shoreline. As such, residential use of Parcel K is allowed under Chapter 91, and no substitution or offset is required for residential use on Parcel K to be incorporated in the Northern Avenue WDP. Additionally, Massport does not permit residential use on any first floor on any property within the CFDA.

2.5.2 Height

The Chapter 91 regulations limit building heights within filled tidelands which, when applied to the Northern Avenue WDP Area, would allow a 55-foot building height at the southern side of Northern Avenue, rising to an approximately 130-foot height at the landward limit of the Northern Avenue WDP Area/Chapter 91 licensing boundary.

However, the Northern Avenue WDP sets forth a substitution for these Chapter 91 regulations that allows building heights on the south side of Northern Avenue to exceed these elevations, with the condition that certain mitigating "offsets" are provided. Specifically, the Northern Avenue WDP requires that an additional half foot of public open space be provided as an offset for every foot of net new shadow impact beyond that which would be created by a Chapter 91 compliant building.

The Northern Avenue WDP as currently written establishes a maximum building height of 130 feet on the portion of Parcel K-1 within the Northern Avenue WDP Area, 140 feet on the portion of Parcel K-1 beyond the limits of the Northern Avenue WDP Area, and 100 feet on Parcel K-2, regardless of location within or beyond the Northern Avenue WDP Area. In that buildings of these heights would likely exceed the Chapter 91 regulatory height limitations described above, any building so designed will be required to utilize the height substitution established by the Northern Avenue WDP, and will need to provide the offsets described therein.

The height amendment adopted herein maintains the building height limitations on Parcel K-1 established in the Northern Avenue WDP, but restores the allowable building heights on Parcel K-2 from 100 feet to 130 feet within the Northern Avenue WDP Area, and 140 feet on the remainder of the parcel (as measured from grade to the roof of highest occupied floor). As above, any building so designed will be required to meet the height substitution requirements established by the Northern Avenue WDP, and will need to provide evidence of such compliance during the Chapter 91 licensing process.

A shadow impact analysis of buildings designed utilizing the maximum building heights adopted by this amendment has been completed and is presented in Section 4.0. This analysis demonstrates that increasing the maximum building height on Parcel K-2 from 100 to 130/140 feet would result in only a minor increase in net new shadow as compared to a Chapter 91-compliant building, and that adequate open space exists to meet the offset requirements established in the Northern Avenue WDP.

2.6 Implementation Program

The implementation program established in the Northern Avenue WDP fully addresses the Final Amendment presented herein, and no changes to the program have been adopted in association with this Final Amendment.

2.7 Consistency with Coastal Zone Management Policies

The MOU requires the Northern Avenue WDP be consistent with "*the applicable policies of the Massachusetts Coastal Zone Management Program.*" These are identified in the Northern Avenue WDP to include the Port and Harbor Infrastructure Policies, the Public Access Policies and Management Principles, and the Growth Management Principles.

The Final Amendment is compliant with the Coastal Zone Management Consistency Statement presented in the Northern Avenue WDP and no changes to the Northern Avenue WDP Consistency Statement have been adopted in association with this Final Amendment.

2.8 Accommodation for Redevelopment of Existing Structures

There are no existing structures on the Parcel K site. The site is currently used as a surface parking lot.

2.9 Additional Requirements within the DPA Area

Parcel K is not located within a Designated Port Area.

Section 3.0

Assessment of Residential Use

3.0 ASSESSMENT OF RESIDENTIAL USE

The Northern Avenue WDP identifies allowed uses on Parcel K-1 to include, among others, office, hotel, district service, light industrial, and ancillary retail and restaurant uses. However, the 2001 Northern Avenue WDP specifically identifies residential as a prohibited use on Parcels K-1 and K-2. This Final Amendment re-introduces and adopts residential as an allowed use on Parcel K-1.

3.1 Final Northern Avenue WDP Amendment – Residential Use of Parcel K-1

This Final Northern Avenue WDP Amendment re-introduces and adopts residential as an allowed use on Parcel K-1. Such use was anticipated in the CFDA EIRs, and residential development was originally intended to be one of the allowed uses on the western half of Parcel K (Parcel K-1, away from the Massport Haul Road). In response to concerns expressed by others at the time, Massport subsequently committed to a prohibition of residential use on any part of Parcel K. This change was agreed to by Massport to mitigate any potential impacts of residential development to the working port, to the extent they were understood at the time.

The decision by Massport to remove residential use from consideration on Parcel K was made in 2001, long before the adjacent Park Lane Seaport Apartments had been constructed and occupied. At that time, the redevelopment of the CFDA had only barely begun and no new, stand-alone residential development had yet occurred anywhere in the South Boston peninsula, on or off of Massport property (excluding renovations of existing Fort Point Channel buildings). At that time, residential use was perceived by some as an untested idea that might be incompatible in general proximity to the working port. The genesis of this concern was related to the perception that residential uses have a high sensitivity to the visual and noise impacts of a working port, particularly those associated with trucking activities.

As is more fully described below, Massport's experience gained through observing nine years of successful operation of the Park Lane Seaport Apartments project (465 apartment units) and nearly one year's operation of the Waterside Place project (236 apartment units) is that residential use has not had an adverse impact on the working port. This is likely due, in part, to the effectiveness of the specific design, operational and legal requirements imposed by Massport on these developments through its ground leases, as well as the evolving expectations of the residents who choose to live in this area.

3.2 Residential Use Assessment

In assessing the appropriateness of potential land uses for Parcel K, the Northern Avenue WDP looked at five "Characteristics" of a number of alternative uses, including residential, and developed a "Parcel K-1/K-2 Use Evaluation Matrix" to assess the compatibility of these uses. A copy of the Use Evaluation Matrix presented as Table 1 in the Northern Avenue WDP is included herein as Attachment C. The characteristics utilized in the Northern Avenue WDP Parcel K-1/K-2 use evaluation included:

- Vehicular Circulation
- Pedestrian Circulation
- Noise Sensitivity
- Visual Sensitivity
- Design Features

In assessing residential use, the evaluation indicated that the impact from "Vehicular Circulation" and "Pedestrian Circulation" were not as significant as the allowed uses, including "Office" and "Parking," but ranked "Noise Sensitivity" and "Visual Sensitivity" as significant, and "Design Features" as requiring "moderate to high" levels of capital investment. The following sections re-assess the prohibition on residential use of Parcel K, and specifically Parcel K-1, utilizing the original "Parcel K-1/K-2 Use Evaluation Matrix" and, more importantly, with the benefit of the subsequent experience gained regarding residential use in the Northern Avenue WDP Area.

3.2.1 Vehicular Circulation

The 2001 Northern Avenue WDP Evaluation Matrix noted that peak vehicular trip levels associated with residential use would occur during evening hours and weekends, and that such peak activity "creates/encourages increased transit use, walk to work, and reverse commute opportunities." In contrast, parking and office use were identified as having the "heaviest activity during weekday AM and PM periods" and "highest number of vehicular trips and parking demand concentrated [during] weekday in AM and PM peaks." Given the above, it is not clear why the matrix did not find residential to be an acceptable use as regards vehicular circulation, with less potential impact than other acceptable uses, such as parking and office. Indeed, recent analysis of the vehicular impact of a proposed residential use project on Parcel K-1, combined with hotel use on Parcel K-2, demonstrates that residential use meets the criteria for compatibility with the CFDA, as such compatibility was defined in the CFDA EIRs. The following is excerpted from the 2013 Traffic Impact and Access Study for that project:

"CFDA COMPARABILITY METRICS" [2]

"The Final Environmental Impact Report (EIR) for the CFDA established a methodology for the analysis of projects within the CFDA. This methodology is based on a determination of comparability between the development proposal and the assumptions for the specific parcel as presented in the Draft and Final EIRs for the CFDA. The key criteria to be compared are as follows:

1. *Vehicle trip-generation for vehicle trips;*
2. *Benchmarked transit capacity and demand; and*
3. *Development of parking spaces."*

"If, after reviewing the three criteria listed above, it is determined that development proposal is comparable to the assumptions contained in the Draft and Final EIR for the subject CFDA parcel, then no further detailed analyses of the impact of the project on the transportation infrastructure will be required. If it is determined that there are significant differences between the development proposal and the CFDA assumption, the project may require an analysis of the additional impacts. With specific regard to the parking allocation, the comparability criteria allow for a variance of less than or equal to 10 percent of the parking allocation defined for the specific development parcel in the aforementioned CFDA documents."

"Table 6 provides the requisite CFDA comparability analysis as identified in the CFDA Final EIR for the current development program for Parcel K.

Table 6: PARCEL K CFDA COMPARABILITY ANALYSIS

Comparability Metric	*CFDA Allocation*	*Project*	*Comparable? (Yes/No)*
Vehicle Trips (AM/PM Peak Hour)	*130/140*	*100/140*	***Yes***
Transit Trips[a]	*185*	*51*	***Yes***
Parking Spaces	*670*	*640*	***Yes***[b]

[a] *Evening peak-hour outbound trips only.*

[b] *Less than a 10 percent variation from the CFDA parking allocation for Parcel K.*

[2] Vanasse and Associates, Inc., September 2014, "Traffic Impact and Access Study, Proposed Mixed Use Development on Parcel K, Boston, Massachusetts," Appendix C, Expanded Environmental Notification Form, Parcel K, Northern Avenue, South Boston, September 30, 2014

*As can be seen in Table 6, **the [proposed Parcel K] Project was found to meet the comparability test for compliance with the CFDA master plan as defined in the Draft and Final EIR with respect to the three comparability criteria (vehicle trips, transit trips and parking spaces).**"*

While the above example does not represent the only possible scenario for the future Parcel K site use potentially enabled by the Final Amendment, it does demonstrate that residential development can be successfully advanced at Parcel K in compliance with the CFDA EIRs as regards traffic, and with no greater impact than the uses allowed as-of-right. It is of note that the above example indicates that residential use is likely to have less impact than other as-of-right uses, such as office development.

The introduction of mixed-use development into the Northern Avenue WDP Area has helped define the evolving urban fabric of the area and offers office space for businesses, residential apartments for residents, hotels supporting the visitor economy, and restaurant-dominated retail which acts as an amenity for every user class. The residential apartment component affords the ability for residents to utilize public transportation, or to bicycle or walk to work in the Seaport District, the Financial District, or the BMIP, thereby reducing the traffic that might otherwise be generated from this scale of development. This compatible mix of uses will continue to support the Northern Avenue WDP and surrounding districts without negatively impacting the working port or local truck routes.

3.2.2 Pedestrian Circulation

As with Vehicular Access, it is not clear why the 2001 matrix recommended the prohibition of residential use in association with Pedestrian Circulation. The only comment in the matrix relative to Pedestrian Circulation is "peak pedestrian activity evening and weekends." In contrast, the allowed uses of office and parking identify the "highest levels of pedestrian activity during weekday AM and PM peak periods," and note the need for "safe, convenient connections" to nearby public amenities.

Ultimately, residential development requires the same considerations as to public access as the other approved uses for the parcel, and any development in the area will be required to supply the same. That said, the Final Amendment limits residential use to the western side of Parcel K, adjacent to the Park Lane Seaport Apartments and the retail and restaurant amenities of the Northern Avenue WDP Area. No conflict is created with Massport Haul Road and the industrial areas further to the east.

3.2.3 Noise Sensitivity

The Northern Avenue WDP use matrix for Parcel K identifies "noise sensitivity" as a potential constraint to residential development, due to the "high sensitivity [of such use] to noise, particularly during evenings and weekends." As noted above, this concern has been shown to be fully addressed by specific mitigation measures.

The genesis of the above concern was related to the [then] perception that residential uses have a high sensitivity to the visual and noise impacts of a working port, particularly with respect to trucking activities which were considered by some to be incompatible with residential use in the CFDA. In particular, concerns were raised that residents would object to truck traffic and noise, and to other aspects of the traditional working port and potentially take steps that would have a material, adverse impact on the business practices and operations of the working port.

When the first residential project was constructed on Massport land (Park Lane Seaport Apartments), Massport imposed specific design requirements and use restrictions through its ground lease to mitigate potential conflict between the residential use and port- and aviation-related activities, including trucking. These same restrictions, which remain in effect for the entire term of the ground lease and which will be applied to any additional residential uses in the Northern Avenue WDP Area, include:

- A prohibition on any residential uses being located on the first floor;
- A maximum apartment lease term of 2 years;
- A requirement that all residential spaces be constructed to have an interior noise level of not more than 45 dBA (Ldn); and
- A requirement that all apartment tenants sign, as part of their apartment rental lease, a written acknowledgement of the location and proximity of the apartment being leased relative to the working port, including the Fish Pier, the adjacent truck routes, and Logan International Airport, and acknowledging that the working port and the airport operate on a 24-hour, 365-day basis and may emit noise and other impacts.

The experience with Park Lane Seaport Apartments, which opened in 2005, has been overwhelmingly positive. To the best knowledge of Massport, no apartment resident has filed noise complaints for truck activity, or otherwise expressed discontent with truck traffic and noise or the working port. Thus Massport concludes that the concerns expressed by some in the early days of CFDA planning (and well before any residential development had occurred in the area) regarding the potential adverse impact of residential use on the working port have been successfully mitigated by the specific, targeted requirements which Massport has included in all its ground leases for residential projects in South Boston, and which would be applied to any residential development on Parcel K.

3.2.4 Visual Sensitivity

The 2001 Northern Avenue WDP use matrix for Parcel K identifies "Visual Sensitivity" as a potential constraint to residential development, due to the "high sensitivity [of such use] to visual impacts." As with noise sensitivity, such concern has not been borne out. To the contrary, rather than a detriment, the mixed-use nature of the neighborhood - be it the

presence of fishing vessels at the Fish Pier, the proximity to workplaces in the BMIP, the Seaport District or the Financial District, the proximity of Logan International Airport and the Cruiseport Boston terminal, the presence of a variety of restaurants, the views of the harbor and the activities which occur thereon, or the views of the airport and the Boston Harbor Islands - are what make the area attractive to residential living. Residents who voluntarily move to this area do not have negative or entrenched perspectives of the working port or the airport as detracting from their quality of life. As other developments such as Liberty Wharf and the Renaissance Boston Waterfront Hotel have been completed, the vision of a vibrant, mixed-use district has become a reality, and the mitigation measures implemented by Massport to address concerns regarding conflicts between residential uses and port related uses, combined with the demographic changes that have occurred, have proven to be effective.

3.2.5 Design Features

The final evaluation metric for residential use presented in the 2001 Northern Avenue WDP is "Design Features" and, more specifically the note that "operable windows are preferred in residential units," but that such features require "moderate to high level of capital investment." While this may or may not be correct, it would not appear to have bearing on the workability of the port and supporting roadway system. In addition, in response to more recent concerns relative to climate warming and climate adaptation, and the recent experiences with Hurricanes Katrina and Sandy, the use of operable windows in all buildings, be they offices, hotels, service buildings, or residential units, is becoming a safety standard. In fact, both Park Lane Seaport Apartments and Waterside Place feature operable windows.

3.3 Chapter 91 Regulatory Compatibility

Residential use of Parcel K-1 is fully compatible with Massachusetts General Law Chapter 91 and its implementing regulations at 310 CMR 9.00 (Chapter 91). The key regulatory provisions regarding residential use are found at §9.51(3)(b) which prohibits "…nonwater-dependent facilities of private tenancy … at the ground level of any filled tidelands within 100 feet of a project shoreline," and §9.51(3)(c) which prohibits "…buildings for nonwater-dependent use … within a water-dependent use zone…".

The buildable portion of Parcel K is located over 100 feet from the existing project shoreline and is not located within a water-dependent use zone. As a side note, Parcel K is not located within a Marine Industrial Park or a Designated Port Area. Given these factors, use of Parcel K-1 for residential purposes is both compatible and compliant with Chapter 91 and its associated regulations.

3.4 Residential Use Summary

The use of Parcel K-1 for residential purposes was found compatible in the CFDA EIRs and is both compatible and compliant with Chapter 91. A review of the information presented in the CFDA FEIR and the Final Northern Avenue WDP indicate that the prohibition on residential use of Parcel K-1 was included in the Northern Avenue WDP solely in response to the concern, by some, at that time, that such use was potentially incompatible with the area. This concern has not been borne out by the actual track record of residential development in this area, particularly as a result of the safeguards implemented by Massport through its ground lease requirements.

The "Parcel K-1/K-2 Use Evaluation Matrix" presented in 2001 Northern Avenue WDP identified "Vehicular Circulation" associated with residential use as having less of a potential impact on the local roadway network than many of the approved uses, a finding supported by more recent quantitative analyses. As such, and within the framework of the Northern Avenue WDP use evaluation, residential use of the parcel would appear to benefit vehicular circulation.

Similar to vehicular circulation, the Parcel K-1/K-2 Use Evaluation Matrix identified "Pedestrian Circulation" as having less of a potential impact on the local roadway network than many of the approved uses. The design of safe and efficient pedestrian circulation patterns can be accomplished for residential use as well as any of the other potential use of the site. Within the framework of the use evaluation, pedestrian circulation would also appear to be supportive of residential use of the parcel.

The perception that "Noise Sensitivity" and "Visual Sensitivity" would render residential use as non-compatible with the parcel represented the core of the position that such use not be allowed on Parcel K-1. However, this concern was raised prior to virtually any development of the CFDA and Northern Avenue WDP area. Subsequent development, including the adjacent Park Lane Seaport Apartments, has demonstrated that residential use can be developed in a manner that is compatible with the working port. Noise sensitivity has been successfully addressed through design and lease measures, and the visual environment is now seen as a positive attraction, rather than a negative sensitivity. Hence, within the framework of the use evaluation, noise sensitivity has become a moot issue and visual sensitivity supportive of residential use of the parcel.

Finally, the Parcel K-1/K-2 Use Evaluation Matrix identified "design features" as requiring a "moderate to high level of capital investment" due to a presumed preference for operable windows in residential building. The issue does not speak to the impact of residential use within the Northern Avenue WDP Area and is rendered obsolete by recent trends toward operable windows in many types of buildings, including Park Lane Seaport Apartments and Waterside Place.

In summary, the Final Amendment adopting residential use on Parcel K-1 is in agreement with the findings of CFDA EIRs, compliant and consistent with Chapter 91, and is supported by the standards for use as developed in the Northern Avenue WDP.

Section 4.0

Assessment of Building Height

4.0 ASSESSMENT OF BUILDING HEIGHT

The Northern Avenue Waterfront Development Plan contemplates a maximum massing on Parcel K defined by building heights on Parcel K-1 of 130 feet within the portion of the parcel within the boundaries of Northern Avenue WDP Area and 140 feet on the remainder of the parcel, and heights on Parcel K-2 of 100 feet. The Final Amendment re-introduces and adopts allowable heights on Parcel K-2 equal to those on Parcel K-1 (see Figure 4-1, *Parcel K Building Massing*).

4.1 Final Northern Avenue WDP Amendment – Allowable Building Heights on Parcel K-2

The Final Amendment re-introduces and adopts allowable building heights on Parcel K-2 equal to those established for Parcel K-1; specifically, 130 feet within the portion of the parcel within the boundaries of the Northern Avenue WDP Area and 140 feet on the remainder of the parcel. These heights are consistent with the heights originally envisioned and analyzed in the CFDA EIR process. Heights on Parcel K-2 were subsequently lowered in the Northern Avenue WDP in apparent response to the assumption by some that slightly lower building heights on Parcel K-1 would create a transitional relationship between the Northern Avenue WDP Area and the industrial buildings in the BMIP to the east and not, *per se*, upon any quantifiable justification. Subsequent to that time, development in the CFDA and Northern Avenue WDP Area has shown these early assumptions to have been unfounded.

4.2 Building Height and Massing

The maximum building massing increase represented by the adopted height increase on Parcel K-2 is minor, as illustrated in Figure 4-1. This figure shows the increased massing area represented by the Final Amendment in relation to the massing allowed under the Northern Avenue WDP. Note that this is the maximum allowed massing under Chapter 91; building articulation and floor plate dimensional requirements reflected in an actual architectural design would undoubtedly utilize less than the maximum volume available.

4.3 Existing Building Height Substitutions and Off-sets

The existing Northern Avenue WDP sets forth a substitution process that allows buildings on the south side of Northern Avenue to exceed the height limitations established in the Chapter 91 regulations. However, as an off-set for this substitution, the Northern Avenue WDP requires that any building exceeding the Chapter 91 height limitations provide an additional half foot of open space for every one square foot of net new shadow impact on an identified "Shadow Impact Area", as compared to the Chapter 91 "Baseline Condition." The Shadow Impact Areas includes public open space, the Water Dependent Use Zone, and the watersheet within 100 feet of the shoreline. Meanwhile, the Chapter 91 Baseline Condition is defined as the shadow cast by a structure built in full compliance with the

Chapter 91 regulatory requirements for setback, open space and height. For comparing the shadows of a specific building to the Baseline Condition, the Northern Avenue WDP requires the shadows of each building to be assessed at 9:00 AM, 12:00 PM, 3:00 PM, and 5:00 PM on October 23rd.

In anticipation that some, or all, of the buildings to be developed in the Northern Avenue WDP Area would utilize the height substitution and associated off-sets of the Northern Avenue WDP, Massport established an area of open space in the Northern Avenue WDP to be utilized for future shadow impact off-set mitigation. This open space is identified as "Open Space Beyond Ch 91 Jurisdiction For Offset" on Figure 23 of the Northern Avenue WDP and includes the southern half of the Massport South Boston Waterfront Park. For ease of review, Figure 23 of the Northern Avenue WDP is reproduced herein as Figure 4-2.

Massport constructed the South Boston Waterfront Park in 2004 (since renamed South Boston Maritime Park) specifically as an early-action community benefit and, per the Northern Avenue WDP, was intended to serve as a "mitigation bank" for shadow impacts associated with future development within the Northern Avenue WDP area. As shown on Figure 23 of the 2001 Northern Avenue WDP (see Figure 4-2, herein), 26,390 square feet of the Massport South Boston Waterfront Park was specifically set-aside as "Open Space Beyond Ch 91 Jurisdiction for Offset."

As shown on the above figure, the available offset in the Massport South Boston Waterfront Park is 26,390 square feet. A review of the prior projects in the Northern Avenue WDP Area indicates that none of this off-set area has been utilized as shadow mitigation for other projects. Hence, all of the 26,390 square feet of shadow off-set open space remains available for shadow impact mitigation.

4.4 Shadow Impact Analysis

The shadow impact represented by increasing the allowable building elevation of Parcel K-2 from 100 to 130 feet as adopted herein has been assessed and compared to the shadow cast by full build-out of the Chapter 91 Baseline Condition. The results of this analysis are presented in Table 4-1, *Shadow Impact Comparison*.

Table 4-1 replicates the format for shadow impact comparison presented as Table 4 of the 2001 Northern Avenue WDP. As shown, the amended height generates approximately 10,907 square feet of net new shadow as compared to the Chapter 91 Baseline Condition assuming full build-out/massing. Per the above Northern Avenue WDP substitution requirement, a Project fully occupying the mass created by the amended height limitation (see Figure 4-1) would be required to dedicate an additional half foot of public open space for every one square foot of net new shadow impact on the Shadow Impact Area, or 5,454 square feet. Such a requirement could be more than adequately compensated for by dedicating 5,454 square feet of the 26,390 square feet of designated off-set allocated and currently unused in the Massport South Boston Waterfront (Maritime) Park.

Table 4-1 Parcel K Shadow Impact Comparison (Baseline versus Amended Height)*

Time of Day Eastern Standard Time/Eastern Daylight Time	Ch. 91 Baseline Condition	Amended Building Height Subject to Ch. 91	Net New Shadow
8:00 AM / 9:00 AM	6,688	20,247	13,559
11:00 AM / 12:00 noon	8,462	33,906	25,444
2:00 PM / 3:00 PM	6,760	11,383	4,623
4:00 PM / 5:00 PM**	0	0	0
Cumulative Shadow Impact (sum of four shadow impact times above)	21,910	65,536	43,626
Average Shadow Impact per Period (four shadow impacts averaged)	5,477	16,384	10,907

* From Table 4. "Shadow Impact Comparison," *Northern Avenue WDP*, Section 2.6.2, page 31.
** At 5:00 PM the Shadow Impact Area is covered entirely by the existing shadow associated with the adjacent Park Lane Seaport Apartments buildings. Therefore no net new shadows occur at 5:00 PM.

Figures 4-3 through 4-6 outline the Shadow Impact Area and illustrate the shadow impacts for both the Chapter 91 Baseline Condition and the Final Amendment heights at the hours indicated above.

For comparison sake, the above analysis was conducted for the Parcel K building heights allowed under the Northern Avenue WDP prior to the adoption of the Final Amendment (i.e. 130 feet on Parcel K-1 and 100 feet on Parcel K-2). As shown in Table 4-2, the Amended building heights create only 210 square feet of new average shadow impact as compared to the building heights previously allowed in the Northern Avenue WDP.

Table 4-2 Parcel K Shadow Impact Comparison (2001 Northern Avenue WDP in Comparison to Final Amendment)*

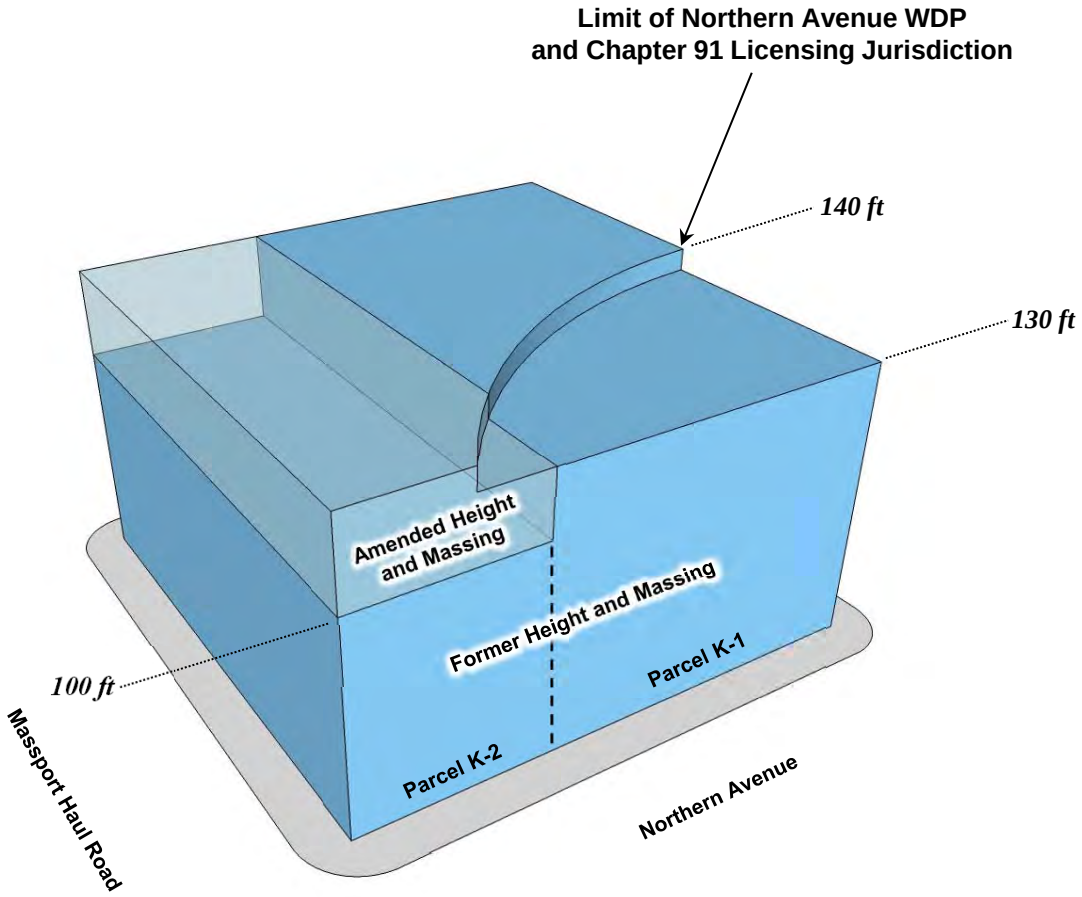
Time of Day E.S.T. / E.D.T.	2001 WDP Building Height Subject to Ch. 91	Final Amendment Building Height Subject to Ch. 91	Difference as a result of Final Amendment
8:00 AM / 9:00 AM	19,484	20,247	763
11:00 AM / 12:00 noon	33,830	33,906	76
2:00 PM / 3:00 PM	11,383	11,383	0
4:00 PM / 5:00 PM**	0	0	0
Cumulative Shadow Impact (sum of four shadow impact times above)	64,697	65,536	839
Average Shadow Impact per Period (four shadow impacts averaged)	16,174	16,384	210

* From Table 4. "Shadow Impact Comparison," *Northern Avenue WDP*, Section 2.6.2, page 31.
** At 5:00 PM the Shadow Impact Area is covered entirely by the existing shadow associated with the adjacent Park Lane Seaport Apartments buildings. Therefore no net new shadows occur at 5:00 PM.

4.5 Building Height Summary

The shadow analysis of the building height adopted by the Final Northern Avenue WDP Amendment demonstrates that the height amendment fully complies with the terms of the Northern Avenue WDP by virtue of the availability of open space which qualifies for the offset called for in the MOU. Furthermore, as Parcel K is the last undeveloped parcel within the Northern Avenue WDP Area, the height amendment has no potential to constrain or otherwise limit the development within the Northern Avenue WDP Area by utilizing a portion of the available open space offset.

Finally, the modest increase in building height adopted by the Final Amendment is well within the "Commonwealth Flats Urban Design & Public Realm Guidelines" included as Appendix D of the Northern Avenue WDP, which anticipated building heights in the CFDA, including the Northern Avenue WDP Area, of 130 to 250 feet.



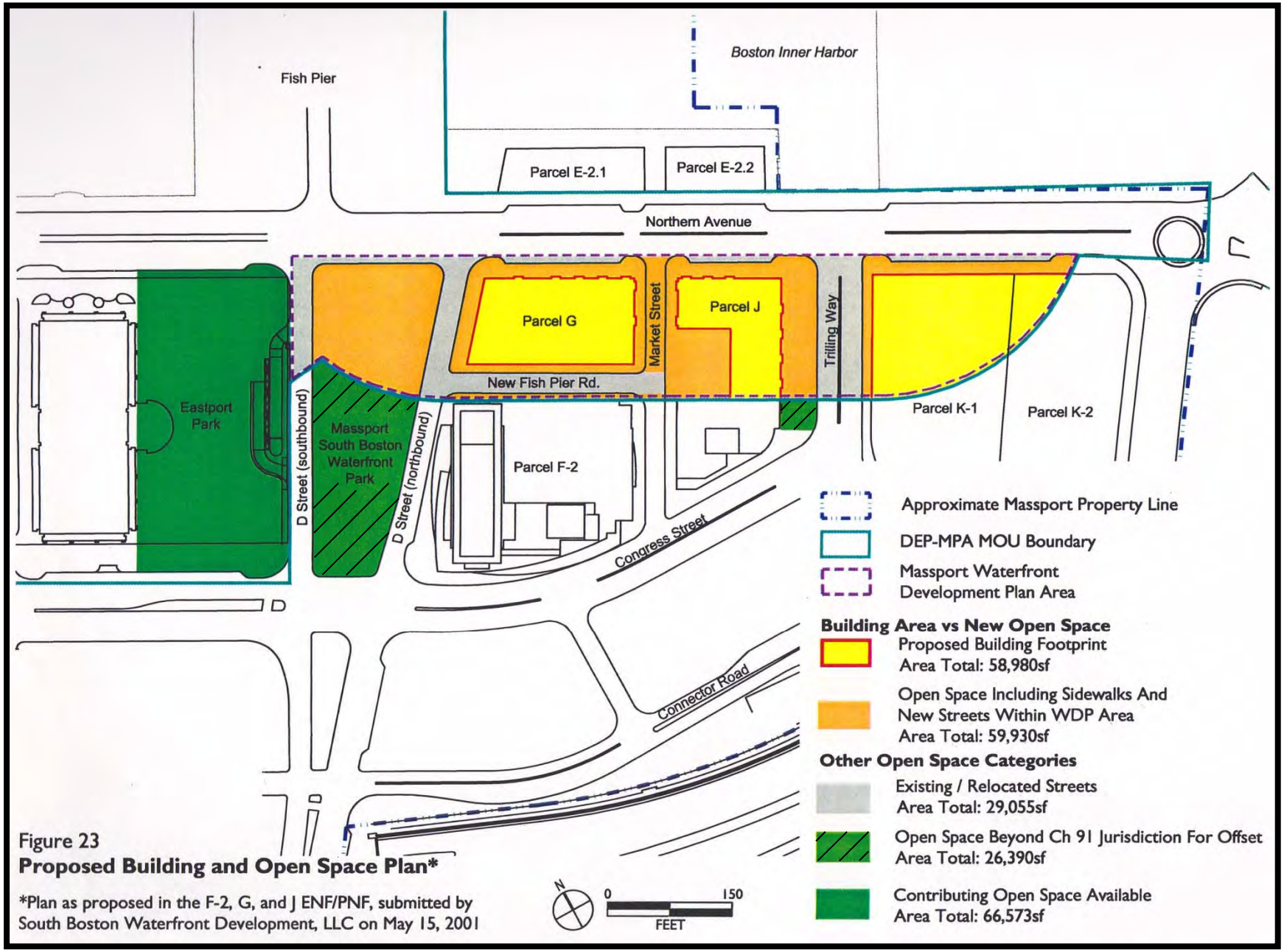
Parcel K Boston, Massachusetts

Source: Arrowstreet

Epsilon ASSOCIATES INC.

Figure 4-1

Parcel K – Amended Building Height and Massing



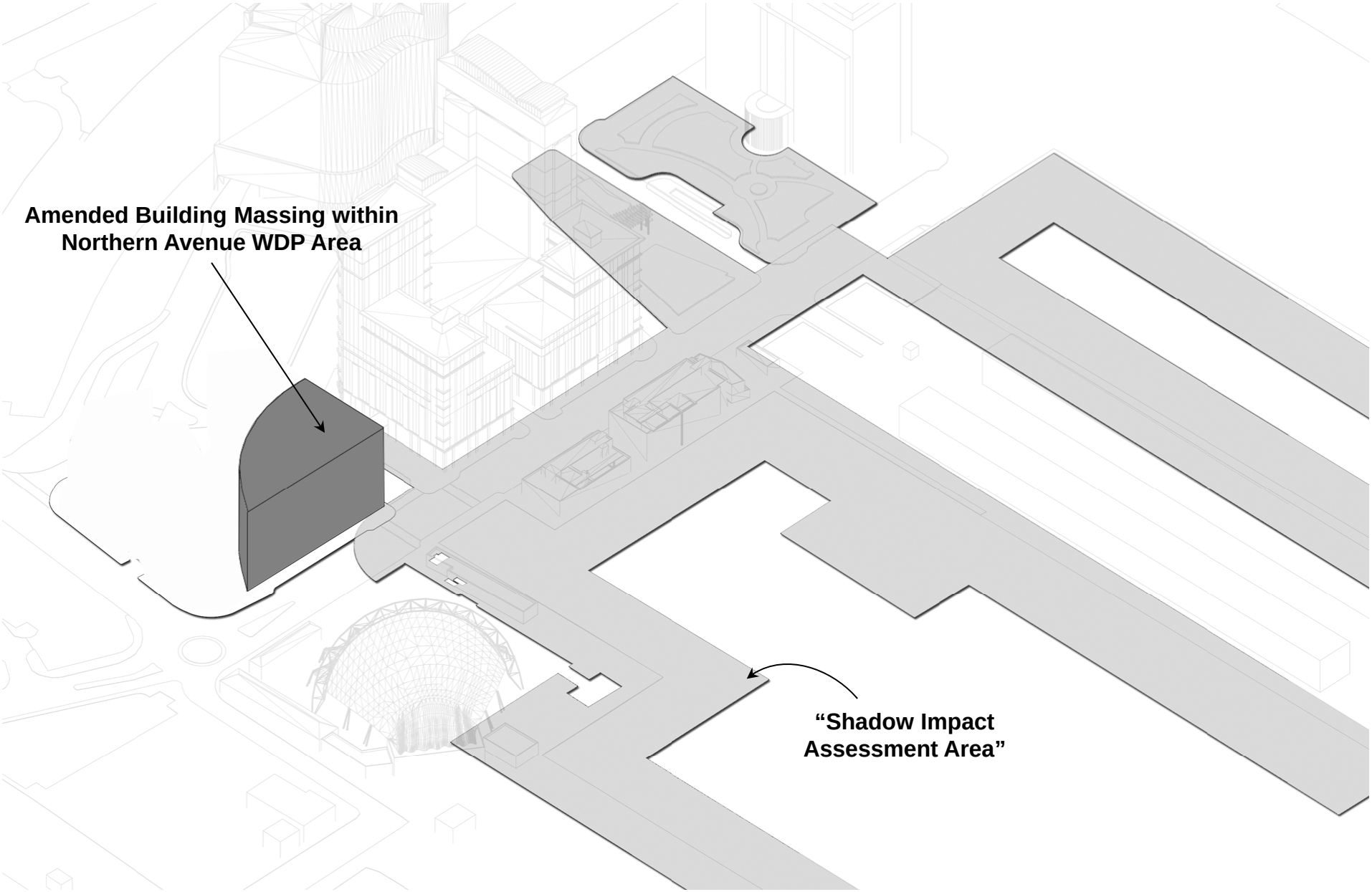
Parcel K Boston, Massachusetts

Source: Final Northern Avenue Waterfront Development Plan, 8/1/2001 (Massachusetts Port Authority)

Epsilon ASSOCIATES INC.

Figure 4-2

Reproduction of Figure 23 from 2001 Northern Avenue WDP "Proposed Building and Open Space Plan "



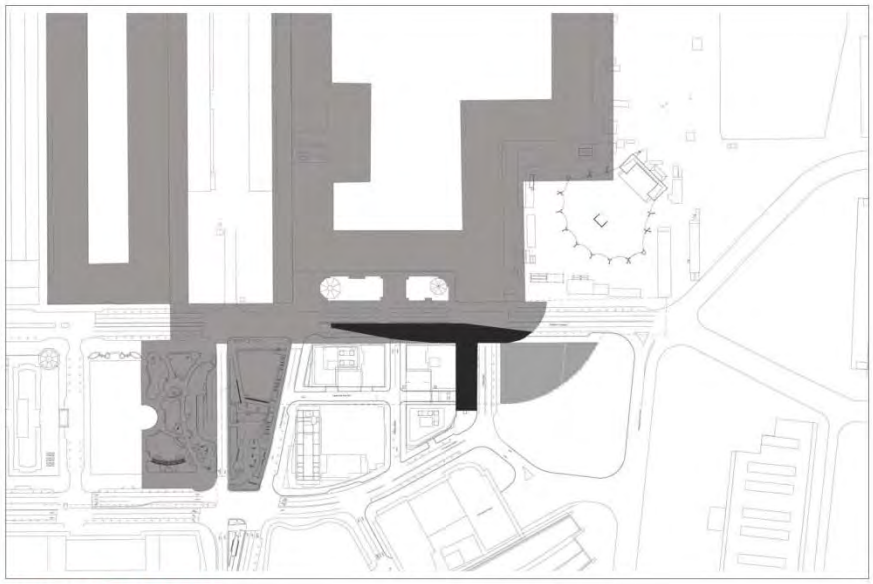
Parcel K Boston, Massachusetts

Source: Arrowstreet

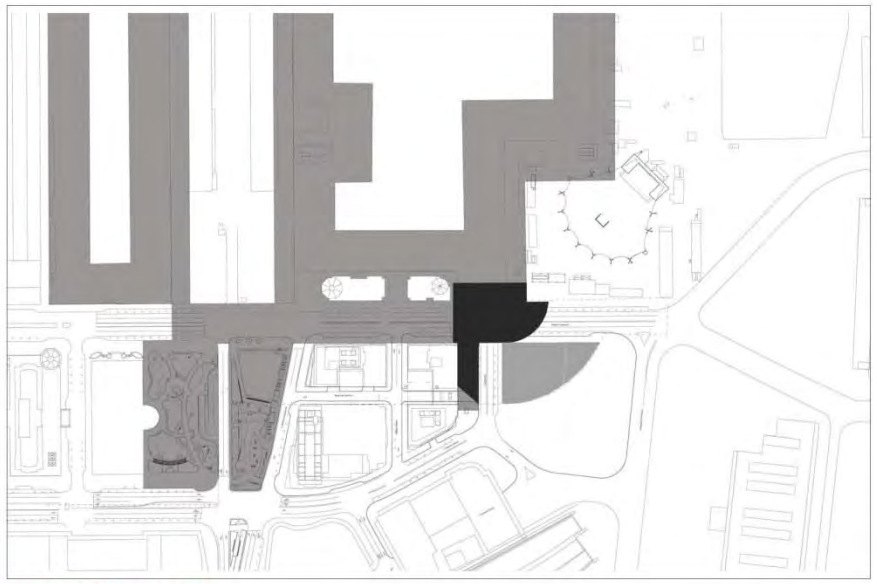
Epsilon ASSOCIATES INC.

Figure 4-3

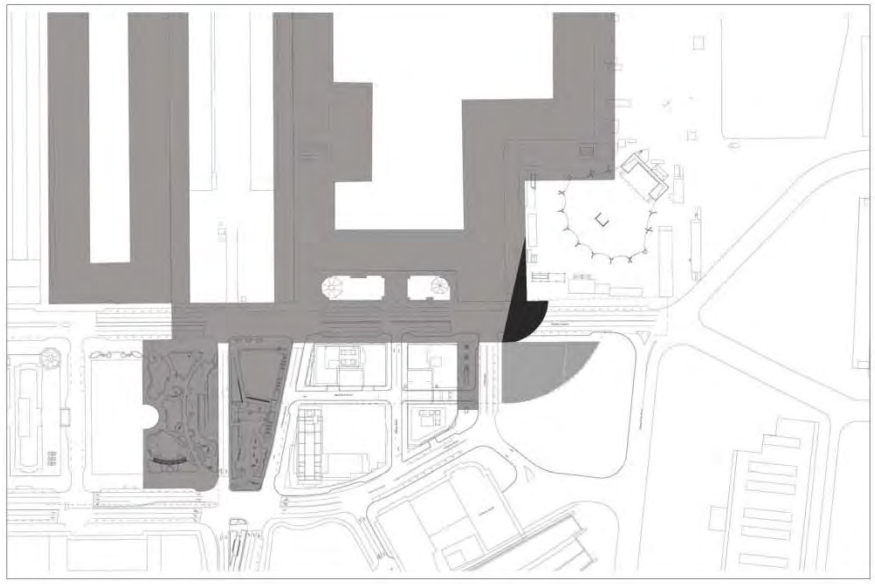
Northern Avenue WDP Shadow Analysis – Amended Building Massing



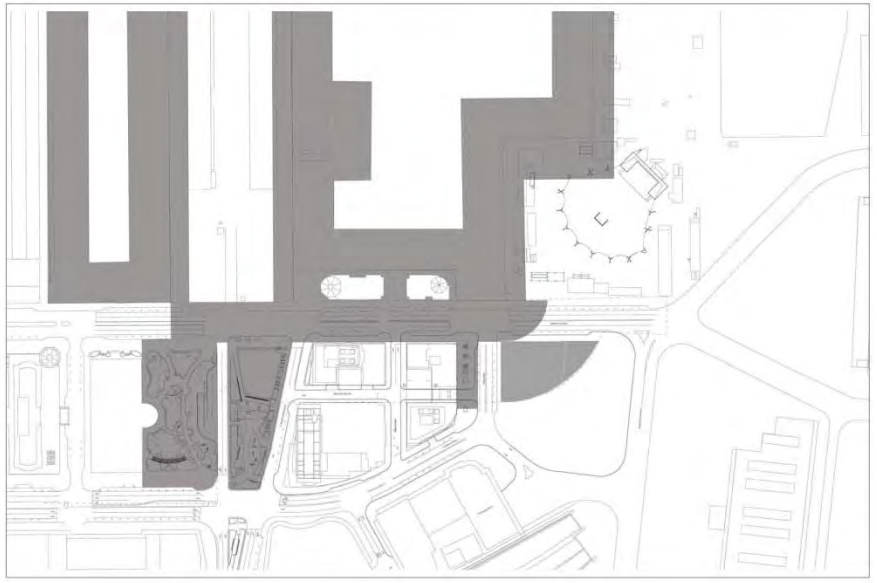
OCTOBER 23 9AM



OCTOBER 23 12PM



OCTOBER 23 3PM



OCTOBER 23 5PM

Shadow Impact Area Shadow Impact

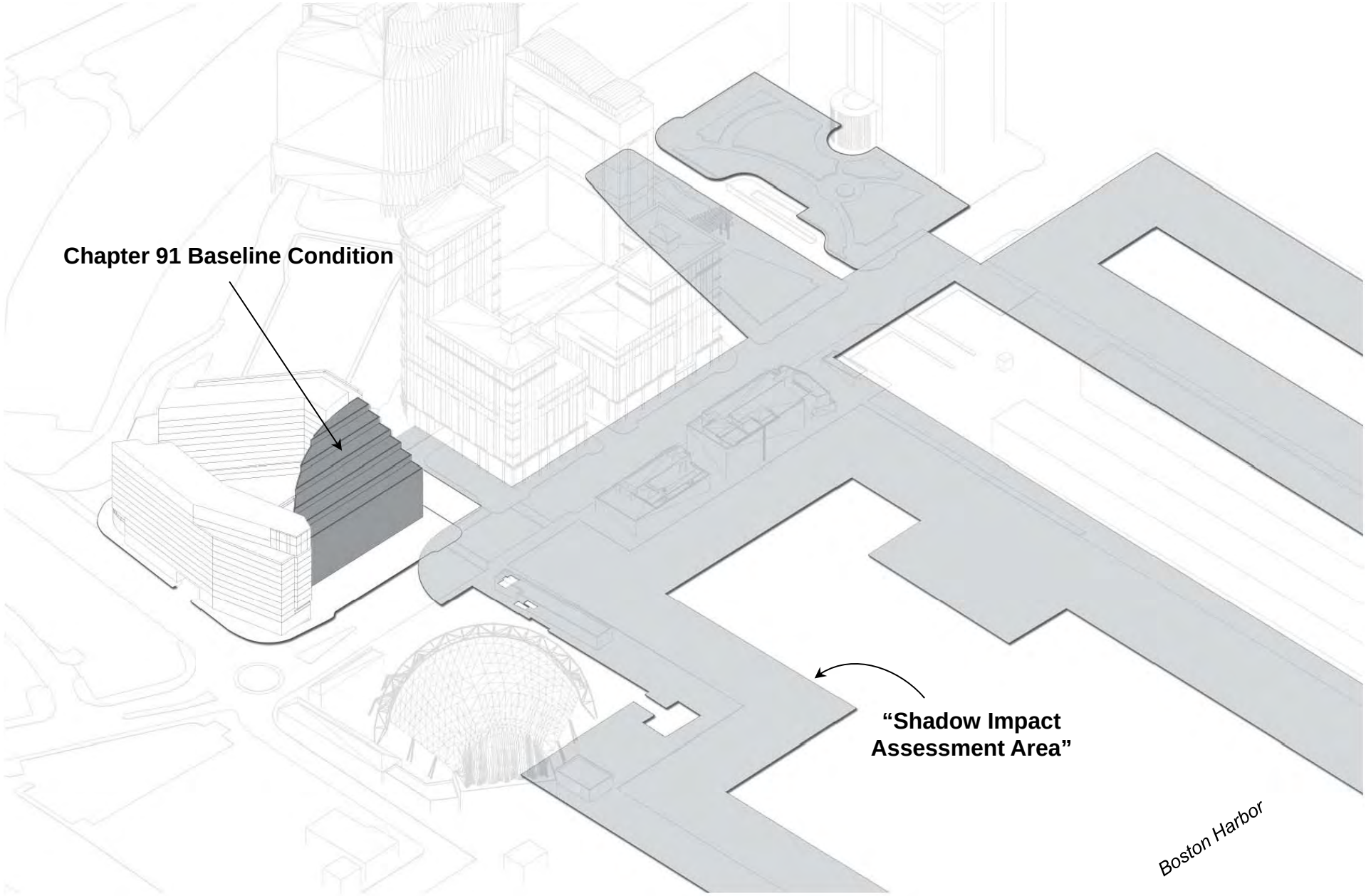
Parcel K Boston, Massachusetts

Source: Arrowstreet

Epsilon ASSOCIATES INC.

Figure 4-4

Northern Avenue WDP Shadow Analysis, October 23 – Amended Building Massing



Parcel K Boston, Massachusetts

Source: Arrowstreet

Epsilon ASSOCIATES INC.

Figure 4-5

Northern Avenue WDP Shadow Analysis – Chapter 91 Baseline Condition

Parcel K Boston, Massachusetts

Source: Arrowstreet

Epsilon ASSOCIATES INC.

Figure 4-6

Northern Avenue WDP Shadow Analysis, October 23 – Chapter 91 Baseline Condition

Section 5.0

The Final Northern Avenue Waterfront Development Plan Amendment

5.0 THE FINAL NORTHERN AVENUE WATERFRONT DEVELOPMENT PLAN AMENDMENT

The development of Northern Avenue WDP Area has undergone extensive planning analysis, much of which has been tested through the subsequent build-out of the area. Parcel K is the final parcel available to be developed within the Northern Avenue WDP Area.

The Final Amendment presented herein is specific to Parcel K, in-so-much as the constraints imposed by the 2001 Northern Avenue WDP were specific to the parcel. Specifically, the Final Amendment provides for:

1. The re-introduction of residential as an allowed use on Parcel K-1, and

2. A return to an allowed building height on Parcel K-2 of 130 feet within the Northern Avenue WDP Area and 140 feet on the remainder of the parcel (as measured from "Grade to Roof of Highest Occupied Floor)."

The Draft and Final EIRs for the CFDA analyzed a condition that assumed both of the above conditions, and found no quantitative detriment associated with either. The subsequent removal of residential use on Parcel K-1 and the reduction in building height of Parcel K-2 in the Northern Avenue WDP was a qualitative decision resulting from the then-perception that such use and building height would have a detrimental effect on the maritime industrial uses of the nearby BMIP, and on the adjacent maritime industrial roadway system. The perceived solution was to replace a residential structure with an above-grade parking garage to be constructed as a barrier between the mixed-use Northern Avenue WDP Area, and the maritime industrial environment to the east.

The subsequent build-out of the Northern Avenue WDP Area, and indeed, most of the CFDA and beyond, has shown these earlier concerns to be fully addressed with targeted mitigation measures. The introduction of mixed-use development into the Northern Avenue WDP Area has defined the urban fabric of the area through the creation of office space for businesses, residential apartments for residents, hotels that support the visitor economy, and restaurant-dominated retail which acts as an amenity for every user class. The residential apartment component affords the ability for residents to utilize public transportation, to bicycle, or to walk to work in the BMIP, the Seaport District or the Financial District, thereby reducing the traffic that might otherwise be generated from this scale of development. This compatible mix of uses will continue to support the Northern Avenue WDP and surrounding districts without negatively impacting the working port or local truck routes.

Appendix A

March 15, 2001 Memorandum Of Understanding, Massport and MassDEP

SOUTH BOSTON
March 15, 2001

MEMORANDUM OF UNDERSTANDING

between

Massachusetts Port Authority

and

The Commonwealth of Massachusetts
Department of Environmental Protection

This Memorandum of Understanding ("MOU") entered into as of **March 15,** 2001 by and between the **Massachusetts Port Authority** ("Massport") and **The Commonwealth of Massachusetts Department of Environmental Protection** ("DEP") relative to the licensing of certain projects on certain properties owned by Massport in South Boston:

WHEREAS, Massport is a body politic and corporate created by Chapter 465 of the Acts of 1956, as amended (the "Enabling Act"), to engage in, *inter alia*, the operation, maintenance and improvement of the Port of Boston;

WHEREAS, the DEP is an agency of the Commonwealth of Massachusetts created pursuant to M.G.L. Ch. 21, authorized to administer the provisions of M.G.L. Ch. 91, §1 through 63, commonly known as the Public Waterfront Act ("Ch. 91 ");

WHEREAS, pursuant to the authority contained in § 18 of said Ch. 91, the DEP has promulgated regulations codified at 310 CMR 9.00 et seq. (the "Regulations");

WHEREAS, pursuant to §4C of the Enabling Act, Massport and *inter alia*, the DEP are authorized and empowered to enter into agreements furthering the purposes of the Enabling Act, which include, but are not limited to, the operation and development of the Port of Boston and other property owned by Massport;

WHEREAS, §6 of the Enabling Act provides that, although the DEP may "issue licenses and permits for filling, dredging, building of structures or excavating within the Port of Boston,...no such licenses or permits shall be required to be obtained by [Massport]";

WHEREAS, §9.03(3) of the Regulations states that Massport may undertake "without written authorization in the form of a license or permit from the Department ... any project consisting entirely of water-dependent industrial uses or accessory uses thereto on previously filled or flowed tidelands within the Port of Boston;"

WHEREAS, §9.03(3) of the Regulations provides that "Massport shall obtain a license or permit pursuant to M.G.L. c. 91 for any project consisting entirely of uses other than water-dependent industrial uses";

WHEREAS, §9.03(3) of the Regulations further provides that the DEP and Massport may enter into agreements to further clarify the DEP's jurisdiction under Ch. 91 for certain activities undertaken on Massport land that include Water-dependent Industrial or Accessory Uses and Nonwater-dependent uses;

WHEREAS, Massport has identified Special Planning Areas within the Massport Properties in South Boston where it may undertake future projects that include both Water-dependent Industrial Uses and Nonwater-dependent Uses;

WHEREAS, Massport has invested well over $100,000,000 in the past ten years to provide the necessary infrastructure to facilitate the water-borne transportation of freight and passengers;

WHEREAS, Massport is endeavoring to undertake mixed use development on certain portions of its land holdings in order to generate revenues sufficient to help subsidize substantial capital investments in and operating costs of Port facilities including Conley Container Terminal, the Black Falcon Cruise Terminal, and the Massport Marine Terminal;

WHEREAS, Massport will continue to maintain the functions of the Designated Port Areas and will protect deep water berths, channels and transportation infrastructure necessary to support the operations of the Port of Boston and maintain its competitive position in the future;

WHEREAS, Massport has undertaken extensive planning in concert with the City of Boston, community representatives and others to create a comprehensive strategy for investment and development of its properties in South Boston, as articulated in the joint City of Boston/Massport Port of Boston Economic Development Plan, the Port of Boston Competitiveness Task Force Report and Massport's Commonwealth Flats Strategic Plan;

WHEREAS, the DEP and Massport recognize the importance of establishing an agreement with respect to the confirmation by the DEP of Massport's compliance with Ch. 91 for activities on certain Massport Properties hereinafter described;

WHEREAS, Massport will obtain licenses from DEP for all activities on the Massport Properties unless exempt by statute, regulation or this MOU;

NOW, THEREFORE, Massport and the DEP agree that, with respect to the Massport-owned properties described herein, the terms of this MOU shall govern the licensing by DEP of certain Projects, as defined below.

Article 1
Definitions

As used in this MOU, the following terms shall have the definitions set forth below:

A. "Accessory Use" means a use customarily associated with and necessary to accommodate principal Water-dependent Industrial Uses. Such Use must be integral in function to the construction or operation of Water-dependent Industrial Uses, or provide related goods or services to persons primarily engaged in such Uses, and be commensurate in scale with the operations of Water-dependent Industrial Uses in the DPA area. Examples of such Accessory Uses include, but are not limited to, access and interior roadways, surface and/or above-and below-grade structured parking facilities, administrative offices and other facilities providing services to Water-dependent Industrial Uses, and office or lodging facilities exclusively serving Water-dependent industrial uses. Uses that may not be determined to be Accessory Uses include, but are not limited to, general office, general hotel and residential facilities, and major retail establishments.

B. "Airport" means Logan International Airport, located in East Boston.

C. "Applicable Regulatory Performance Standards" mean the provisions of the Regulations found at 310 CMR 9.31, 9.32, 9.33, 9.35(1), (2), (3) and (6), 9.37, 9.38, 9.39, 9.40, 9.51, 9.52, and 9.53, for Projects in and outside the DPA, and 9.35(5) for Projects outside the DPA.

D. "Height" or "Height of Building" shall mean the vertical measurement of a structure from the surface on the land or pier on which the structure will be constructed to the peak of the roof, excluding however, any mechanical structures, equipment, architectural features or other facilities that are not intended for habitation.

E. "Maritime Projects" means Projects related to the use and operation of the Port of Boston, including but not limited to facilities related to intermodal transportation of goods shipped by sea, bulk cargo and petroleum facilities, seafood processing facilities, terminals and facilities for commercial and charter fishing, water transportation and other commercial passenger vessel operations, including cruise ship, charter cruises, water taxis, water shuttles, Boston Harbor Islands shuttles and commuter services.

F. "Massport Properties" means those properties owned or leased by Massport or leased by Massport to tenants of Massport, which constitute Commonwealth Tidelands, Flowed Tidelands or Filled Tidelands other than Landlocked Tidelands, or are located within a Designated Port Area (hereinafter, a "DPA"), as those terms are defined in the Regulations, located in the South Boston area of the City of Boston as such properties are more particularly identified on Exhibit A attached hereto and made a part hereof.

G. "Offsets" means those activities, uses, or structures included in a Project to compensate for the application of Substitutions under this MOU and impacts resulting from such Substitutions which are greater than impacts which would result from application of the requirements of the Regulations. Where offsets are required by this MOU, they are to be provided in addition to any Public Benefits which may be required to compensate for the use of Filled or Flowed Tidelands for Nonwater-dependent Uses. Such Offsets may be:

a) numeric, in-kind offsets;

b) qualitative, out-of-kind offsets, provided there is a reasonable proportionality, geographic proximity and temporal proximity so that the public benefits outweigh the detriments within the same area and time frame;

c) offsets that are appropriate for the scale and density of existing structures, taking into account the location of the Project Area in an urban community; and

d) offsets that appropriately reflect the relationship between proposed structures and the waterfront.

If Substitutions allowing Nonwater-dependent Uses in the DPA portion of the Special Planning Area are exercised, Offsets involving the construction or operation of Water-dependent Industrial Use Projects or Maritime Projects in the DPA, or the provision of financial support for such projects or uses, shall be proposed, although Offsets outside of the DPA may be proposed in addition. Any provision of Offsets in the DPA shall not create adverse impacts on the operations of the Designated Port Area.

Where offsets outside of the DPA are proposed, offsets may include, but are not limited to, the creation, development or support of public purpose uses and structures, such as cultural facilities, educational facilities, additional on-site or off-site parks, public art, museums, cultural or other special public destination facilities, transportation facilities or services, off-site harbor walks, additional on-site or off-site open space or greater activation of open space in excess of that required in a Waterfront Development Plan; public pedestrian facilities in excess of those required in a Waterfront Development Plan; promotion, support and maintenance of public facilities, water shuttles to the Boston Harbor Islands or elsewhere in Boston Harbor; the management and/or support for or financial support of public events and activities which help activate the waterfront; and other similar uses or structures or programs described in the Waterfront Development Plan to mitigate or otherwise ameliorate the impact of development of Nonwater-dependent Uses on the Massport Properties. Reductions in wind or shadow impacts below those impacts which would be experienced by the application of the Regulations to a theoretical structure on the Project site may also be considered as an Offset. These Offsets may include the open space provided in connection with the creation of the so-called D Street Open Space authorized by the Written Determination for the World Trade Center, issued by DEP on August 16, 1995.

H. "Project" means any structure, activity or use that is proposed by Massport or a private entity proposing to act under a ground lease of the Massport Properties, for new construction or Substantial Structural Alteration

on the Massport Properties, unless specifically excluded from the scope of this MOU, as set forth below.

I. "Public Benefits" means those features incorporated into a Project to compensate for the use of Filled or Flowed Tidelands for Nonwater-dependent Uses and structures. Where proposed for inclusion within the DPA portion of the Special Planning Area, Public Benefits shall include facilities or financial support for Water-dependent Industrial Uses or non-recreational water-based activities, such as rebuilding or constructing additional pier heads, bulkheads, aprons and fender systems, repairs to the dry dock, implementing elements of the South Boston Transportation Study's recommendations for truck route improvements, dredging to support maritime activities, increasing or improving paved cargo handling surfaces and other lay down areas, providing supporting structures or services for cargo or commercial fishing vessels, ferries, cruise ships and water shuttles, or otherwise improving the freight handling capacity of the Port of Boston. Waterfront walkways, small-scale parks and observation areas may be appropriate in the DPA portion of the Special Planning Area, provided that they will not interfere with any existing or planned Water-dependent Industrial Uses. Any provision of Public Benefits in the DPA shall support Maritime and Water-dependent Industrial activities within the DPA wherever feasible and not create adverse impacts on the operations of such Designated Port Area.

Where proposed for inclusion outside of a DPA, such Public Benefits may include, but are not limited to, facilities that promote active use of the Project shoreline, such as boat landing docks and launching ramps, marinas, fishing piers, waterfront boardwalks, esplanades, walkways, parks, plazas, observation areas, facilities which support water-based activities such as ferries, cruise ships, water shuttles, excursion/charter/rental docks, and community sailing facilities and other facilities which support and/or promote active use of the Project Shoreline and support water-based activities. These Public Benefits may include the open space provided in connection with the creation of the so-called D Street Open Space authorized by the Written Determination for the World Trade Center, issued by DEP on August 16, 1995.

J. "Substitutions" means the substitution of the dimensional and use requirements set forth hereunder for those set forth in the Regulations regarding open space, set backs, water-dependent use zones, ground floor Facilities of

Public Accommodation, Facilities of Private Tenancy over Flowed Tidelands, and Height limitations.

All capitalized terms used herein and not specifically defined above shall have the definitions set forth in the Regulations.

Article 2
General Provisions

2.1. Applicability of MOU. As the development of the Massport Properties will be undertaken on an integrated basis, including a combination of Water-dependent Industrial uses, Maritime Uses, Water-dependent Uses and Nonwater-dependent Uses, except as specifically excluded in Section 2.2 of this MOU, the terms and provisions of this MOU shall govern and apply to Projects on the Massport Properties which do not consist solely of Water-dependent Industrial Uses, Maritime Projects or Accessory Uses. The terms of this MOU shall not apply to structures, projects, or properties owned, operated, developed or leased by Massport on land not contained within the Massport Properties identified on Exhibit A hereto. Notwithstanding the foregoing, Massport may elect to identify an individual non-exempt Project which shall be subject to licensing pursuant to the provisions of 310 CMR 9.00 et seq. or to the provisions of this MOU by written notice to DEP.

Projects which are not exempt from licensing requirements pursuant to Section 2.2 shall be required to obtain a Ch. 91 license in accordance with the requirements of Articles 4 or 5 hereof.

2.2. Projects Not Requiring a License. Notwithstanding anything to the contrary contained in this MOU, in no event shall the terms and provisions of this MOU, apply to or govern the following:

A. all structures, Projects and activities specifically exempted from Ch. 91 and the Regulations pursuant to Section 9.03(3) of the Regulations including:

(1) any Project consisting entirely of Water-dependent Industrial Uses, including Maritime Projects, or Accessory Uses on previously Filled or Flowed Tidelands within the Port of Boston; or

(2) any Project authorized pursuant to the Enabling Act on previously Filled Tidelands within the geographic boundary of the Airport, so long as it is operated as an airport;

B. The continuation in use of any Project or structure on the Massport Properties, whether owned or leased by Massport or leased by Massport to tenants of Massport, existing as of October 4, 1990 and for which no unauthorized structural alteration or change of use has occurred since October 4, 1990, provided said Project or structure:

(1) includes Water-dependent Industrial Uses, including Maritime Projects or Accessory Uses;

(2) is any other Project for which a final EIR was certified as adequate and properly complying with M.G.L. Ch. 30, §§61 through 62H, prior to January 1, 1984; or

(3) is any Project or structure in existence as of the date of this MOU for which DEP has issued a determination of exemption from the requirements of Ch.91.

C. Maintenance, repair and minor modification of existing structures described in (A) through (E) herein, whether owned or leased by Massport or leased by Massport to tenants of Massport;

D. Any other activity on the Massport Properties otherwise exempt from the requirement of the Regulations pursuant to Section 9.05(3) thereof; and

E. All Projects undertaken by Massport for the use of Massport and in aid of the performance of its governmental functions as provided in the Enabling Act.

No permit, license or approval pursuant to Ch. 91 shall be required for those structures, Projects and activities described in paragraphs (A) through (E) above.

2.3. MOU as Exclusive Regulatory Framework. The terms and provisions of this MOU, including references to the Regulations as modified by a Waterfront Development Plan, shall constitute the exclusive framework under Ch. 91 and M.G.L. c. 21A for regulation of structures and uses on the Massport Properties. The terms and provisions of any Municipal Harbor Plan now or hereinafter approved by the Executive Office of Environmental Affairs shall not govern the development, use or dimensional requirements of Projects on the Massport Properties.

Article 3
Massport Properties Waterfront Development Plan

3.1. Development of Waterfront Development Plans. Massport may develop and adopt one or more Waterfront Development Plans (the "Waterfront Development Plans") for certain portions of the Massport Properties known as the "Special Planning Area" shown on Exhibit B hereto, the adoption of which shall be subject to the review and approval process set forth in Section 3.3 below. Such Waterfront Development Plans, once approved, shall be used by Massport and DEP in connection with the licensing of future Projects undertaken on Massport Properties under this MOU. The Waterfront Development Plan(s) may be developed and adopted by Massport simultaneously or in sequence.

3.2. Waterfront Development Plan Elements. The Waterfront Development Plan(s) shall set forth criteria, performance standards and guidelines for development applicable to Projects in the Special Planning Area. All of the Massport Properties designated within an area covered by a Waterfront Development Plan shall be treated as a single site or parcel for the purposes of meeting the requirements of this section and licensing pursuant to this MOU. The Waterfront Development Plans shall include:

A. Planning Analysis. A description of the planning analysis which synthesized the technical data, public input and other information which served as the basis for the proposed Waterfront Development Plan.

B. Proposed Uses. A description of the proposed uses for the Planning Area. Uses proposed and described shall conform to the standards set forth in Regulations, as set forth in the Applicable Regulatory Performance Standards, unless otherwise specifically allowed in the approved Waterfront Development Plan.

C. Public Benefits for Nonwater-dependent Uses. If the Waterfront Development Plans include any Nonwater-dependent Uses, the plans shall identify appropriate potential Public Benefits which may be constructed by Massport or its tenants on either the Massport Properties or other properties owned or being leased by Massport, as mitigation for the development of Nonwater-dependent Uses on the Massport Properties. For Projects within a DPA, the Plan shall provide as primary Public Benefits facilities or financial support for Water-dependent Industrial Uses as described in Article 1(I) of this

MOU, and may also include additional Public Benefits either in or outside the DPA. The Waterfront Development Plans shall also contain a methodology for allocating the Public Benefits required for each Nonwater-dependent Use. The Public Benefits shall be developed, constructed or otherwise provided before, after, or simultaneously with development of Nonwater-dependent Uses on the Massport Properties, provided such Public Benefits are developed, constructed or otherwise provided prior to or within a time frame that is reasonably proximate to the development of the Nonwater-dependent Use to which said Public Benefit is allocated but no later than 12 months from the completion of the Project, and, to the extent not fully allocated to a particular Nonwater-dependent Use, the Public Benefits may be applied retrospectively or prospectively as Public Benefits or Offsets for another Nonwater-dependent Use. The Waterfront Development Plan shall describe a methodology for tracking the allocation of Public Benefits and the Offsets described below.

D. Design Requirements. Waterfront Development Plans that include Nonwater-dependent Uses shall identify performance criteria for Nonwater-dependent Uses, including, but not limited to, dimensional guidelines, design guidelines and requirements regarding public and pedestrian access and also identify those criteria which are Substitutions for performance requirements set forth in the Applicable Regulatory Performance Standards.

E. Offsets. Where appropriate for Nonwater-dependent Uses, the Waterfront Development Plans shall identify potential Offsets to mitigate impacts from Substitutions which result in greater impacts than would result from the application of the Applicable Regulatory Performance Standards. Where required, the Offsets shall be developed, constructed or otherwise provided prior to or within a time frame that is reasonably proximate to the development of the Project built with the exercise of a Substitution, but no later than 12 months from the completion of the Project, and to the extent not fully allocated to a particular Project, the Offset may be applied retrospectively or prospectively as an Offset or Public Benefit for another Project. The applications of Substitutions and use of such Offsets, together with the Public Benefits, shall ensure that the Waterfront Development Plan will promote, with comparable or greater effectiveness than the Regulations, the Commonwealth's tidelands policy objectives.

F. Implementation Program. Commensurate with the scope of the Waterfront Development Plan, the Plan shall include an implementation program, which may include provisions in leases and licenses, to ensure ongoing compliance with obligations set forth in said Waterfront Development Plan.

G. Consistency with Coastal Zone Management Policies. The Waterfront Development Plans shall describe the Plan's consistency with all applicable policies of the Massachusetts Coastal Zone Management Program, including the Port and Harbor Infrastructure Policies, Public Access Policies and Management Principles and Growth Management Principles.

H. Accommodation for Redevelopment of Existing Structures. Waterfront Development Plans may include provisions allowing for the redevelopment of existing structures with application of specific dimensional and design guidelines and/or access requirements set forth in the Waterfront Development Plan, provided such redevelopment (i) results in structures with the same or lesser footprint area, and total building volume as the original use and/or structure; (ii) provides appropriate Public Benefits to compensate for the impacts of any new or additional use of filled Tidelands for Nonwater-dependent Use; (iii) provides proportional compensatory Offsets, if such redevelopment results in any greater net impact than the existing use or structure; and (iv) provides public access through the use of a harbor walk to the maximum extent practicable, unless incompatible with Water-dependent Industrial Uses in the area. Any such dimensional and design guidelines may serve as Substitutions under this MOU.

I. Additional Requirements Within the DPA Area. In addition to the elements described in A through H above, any Waterfront Development Plan(s) that incorporate portions of the Special Planning Area lying within the South Boston DPA shall contain:

(1) an inventory of all currently existing uses within said DPA Special Planning Area. This inventory shall specify the uses by type, in categories, including but not limited to, Maritime and Water-dependent Industrial Uses, Accessory Uses, Supporting DPA Uses, Temporary Uses, and other uses. The inventory shall provide a percentage breakdown by type of use, including an overall calculation of total Water-dependent Industrial Uses, Accessory Uses, Supporting DPA Uses, and Temporary Uses compared to all other Uses;

(2) an analysis assessing the feasibility of future Water-dependent Industrial Uses, considering the area's existing uses, characteristics and the context of surrounding land uses and activities, and determining whether additional uses are appropriate for the study area.

(3) a representation by Massport that it shall maintain Water-dependent Industrial Uses, Accessory Uses, Maritime Projects, and/or Temporary Uses on no less than seventy-five percent (75%) of the entire area consisting of those portions of Massport Properties located in a DPA, and a description of those uses which may comprise the remaining twenty-five percent (25%) or less, including Supporting DPA uses and other uses proposed for the Waterfront Development Plan Area. For purposes of this evaluation, Massport shall employ the methodology described in the Boston Marine Industrial Park Master Plan Update submitted to the DEP in July 1998.

(4) a description of the arrangements to be provided for Water-dependent Industrial Uses to be continued at their current locations or at appropriate alternative locations in the Port of Boston.

(5) a representation by Massport's Maritime Director that (a) any Nonwater-dependent Projects proposed within the DPA will not give rise to severe conflict with Port operations or excessive consumption of Port space, either directly or indirectly and (b) the implementation of the Waterfront Development Plan shall not significantly disrupt any existing Water-dependent Industrial Uses in areas outside, but proximate to, the Waterfront Development Plan area.

(6) with respect to any Waterfront Development Plan for the Fish Pier, as shown on Exhibit C, the Plan shall not propose hotel, residential or other short- or long-term overnight occupancy uses, except those exclusively serving Water-dependent Industrial Uses, or general purpose retail facilities not related to Maritime or Water-dependent Industrial Uses.

(7) notwithstanding the foregoing, Maritime, Water-dependent Industrial, Temporary and Supporting DPA Uses shall be allowed in DPA areas.

3.3. Waterfront Development Plan(s) Preparation, Approval, Amendment.

A. Preliminary Waterfront Development Plan Preparation. To initiate the Waterfront Development Plan process, Massport shall prepare preliminary descriptive materials consistent with the elements set forth in Section 3.2 above, together with any necessary historical or reference maps and/or plans (the "Preliminary Waterfront Development Plan"). Massport shall submit the Preliminary Waterfront Development Plan to the DEP, with a copy to the Massachusetts Office of Coastal Zone Management. Notice of availability of the Preliminary Plan and of the public meeting, shall be provided to Massport's tenants within the Plan area, and Massport shall advise those tenants to notify their subtenants.

1. Within twenty (20) days of receipt by DEP of the Preliminary Waterfront Development Plan, the DEP shall consult with Massport to discuss objectives and plan elements for the Massport Properties.

2. During the twenty (20) day period described in Section 3.3.A(1) above, the DEP shall publish notice of receipt of the Preliminary Waterfront Development Plan in the next available edition of the *Environmental Monitor*, and shall consult with the Massachusetts Office of Coastal Zone Management and other state agencies to evaluate consistency with applicable state agency plans and policies, including applicable CZM policies. If the Director of the Office of Coastal Zone Management determines that the Preliminary Waterfront Development Plan is inconsistent with applicable CZM Policies, the Director shall submit a finding to Massport and DEP indicating the basis for such a determination.

3. For a period of thirty (30) days after publication of notice in the *Environmental Monitor*, DEP and Massport shall accept public comment and shall convene a public meeting to address public comments regarding the elements of the Preliminary Waterfront Development Plan(s).

B. Final Waterfront Development Plan(s) Preparation. After the close of the public comment period referred to in Section 3.3.A above, Massport shall incorporate the reasonable comments received from the DEP and the public into a final Waterfront Development Plan(s) to be presented to the DEP for its

review and approval. Upon receipt of the final Waterfront Development Plan(s), the DEP shall publish notice of receipt of the Final Waterfront Development Plan(s) in the next available edition of the *Environmental Monitor*.

C. DEP Approval of Waterfront Development Plan(s). Not later than forty-five (45) days after the publication of the notice of receipt of the final Waterfront Development Plan(s) by the DEP in the *Environmental Monitor*, the DEP shall approve the Waterfront Development Plan(s), conditionally approve the Waterfront Development Plan(s), or disapprove the Waterfront Development Plan(s). A conditional approval of the Waterfront Development Plan(s) shall specify the conditions of such approval, and a disapproval of the Waterfront Development Plan(s) shall specify the reasons for such disapproval. In its approval, conditional approval or disapproval of the Waterfront Development Plan(s), DEP shall determine:

1. whether the Waterfront Development Plan balances the economic and public benefits of the proposed Plan with Massport's statutory obligation to operate and develop the Port of Boston;

2. whether the Waterfront Development Plan promotes the overall public trust in waterways, taking into account Massport's statutory obligation to operate and develop the Port of Boston, the Commonwealth's public tidelands objectives as embodied in the provisions of 310 CMR 9.00, and the applicable CZM policies;

3. whether the Waterfront Development Plan provides, with equal or greater effectiveness than the Commonwealth's public tidelands objectives embodied in the provisions of 310 CMR 9.00 and applicable CZM policies, Public Benefits and/or Offsets which mitigate, compensate or otherwise offset potential adverse effects on Water-dependent Industrial and Maritime Uses in the Port of Boston; and

4. whether the implementation of the Waterfront Development Plan will serve a proper public purpose, providing greater benefits than detriments to the public rights in the subject tidelands, and that collectively, the private advantages of use are not primary, but merely incidental to the achievement of public purposes, as those purposes are set forth in Ch. 91 and the Enabling Act.

D. Amendments to Waterfront Development Plan(s). The review and approval requirements for amendment of a Waterfront Development Plan(s) shall be the same as those for the initial approval for such plan.

E. Resolution of Disputes. In the event a dispute arises regarding DEP's determination on the Waterfront Development Plan(s), the parties shall engage in mediation in the same manner as described below in Section 5.5. In the event the parties are unable to reach agreement on the content of the Waterfront Development Plans, Massport may elect to withdraw without prejudice all or a portion of the Waterfront Development Plan, or a Project described in the Waterfront Development Plan upon written notice to the Commissioner of the DEP.

Article 4
Licensing of Special Allowed Uses

4.1 Special Allowed Uses. Notwithstanding any other provisions of this MOU to the contrary, the following structures and uses shall be specifically allowed pursuant to this MOU, subject to the conditions and limitations contained in this Article 4, as established in licenses issued pursuant to Sections 5.1 through 5.6 hereof. The DEP shall review applications for licenses for the uses set forth in this Article 4 to determine compliance with 310 CMR 9.32, 9.33, 9.35(1) and (6), 9.37, 9.38(1), 9.39 and 9.40 of the Regulations:

A. The construction of a new commercial restaurant facility on the location of the so-called "Jimmy's Harborside" parcel (parcel E) as shown on Exhibit C, provided that the area of the footprint of the new structure(s) (not including any public pedestrian walkway or harbor walk or transient vessel piers or floats constructed appurtenant thereto) shall not exceed the area of footprint of the present structure, nor shall the Height exceed 55 feet. A new facility on the "Jimmy's Harborside" parcel shall include a harbor walk and a view corridor; and

B. The non-exclusive use of that portion of the water sheet within the Special Planning Area shown on Exhibit C for transient recreational vessel mooring, berths, piers and floats, and supporting structures and facilities thereto, to permit temporary (less than 12 hours) water access

to the restaurant and commercial uses appurtenant thereto. However, such facilities shall not interfere with the use and operations of any existing or proposed Water-dependent Industrial Uses proximate thereto.

4.2 Designated Port Area. Nothing in this MOU is intended to alter the location of the existing boundaries of the South Boston Designated Port Area.

Article 5
Licensing for Non-Exempt Projects

5.1. General Requirements. After the DEP's approval of a Waterfront Development Plan(s) in accordance with Article 3 above, Massport may, from time to time, propose an individual Project or Projects for the Special Planning Area covered by such Waterfront Development Plan(s). If such Project does not require a license, as set forth in Section 2.2 hereof, Massport shall notify the DEP in writing that it will be commencing development of such Project. If such Project is subject to the terms of this MOU as provided in Section 2.1 hereof, Massport or its tenant shall file an application with the DEP in accordance with Section 5.2 below.

5.2. Application: The application for a license under this MOU shall be submitted to DEP by Massport or its tenant on forms provided by the DEP, and meeting the requirements 310 CMR 9.11 of the Regulations (the "Application").

5.3. Notice.

A. Within thirty (30) days of receipt of the Application and the information required in Section 5.2 above, the DEP shall notify Massport, and, if applicable, its tenant, whether the Application meets the minimum submittal requirements or whether additional information is required.

B. Once the DEP determines that the Application meets the minimum submittal requirements, it shall assign a file number to the Project and, in accordance with the Regulations shall publish notice of receipt of a completed Application in the *Environmental Monitor* and shall send notice of the Application to:

1. The City of Boston Conservation Commission, Boston Redevelopment Authority and Harbor Master;

2. The Massachusetts Coastal Zone Management Office; and

3. All abutters to the Project site, identified in accordance with the Regulations.

C. Massport or its tenant shall, upon assignment by the DEP of a file number of the Application and, at its own expense, cause a notice in accordance with the Regulations to be published in one or more newspapers having circulation in the area affected by the Project and shall post such notice at one or more prominent locations on the Project site visible to the public. Massport shall also provide notice of such Application to its tenants located within the relevant Waterfront Development Plan area, and advise such tenants to notify their subtenants.

5.4 Public Hearing. The DEP and Massport shall conduct a public hearing on the application. The hearing shall be noticed in accordance with the Regulations, and shall be conducted no later than forty-five (45) days from the notice in the *Environmental Monitor* provided above.

5.5. DEP Review: Within thirty (30) days of the close of the applicable public comment period, DEP shall review the Application to determine: (i) whether the proposed Project incorporates either directly or in conjunction with the Implementation Program, the Public Benefits and Offsets, if applicable, as set forth in the applicable Waterfront Development Plan; (ii) whether the Project conforms to the Applicable Regulatory Performance Standards and the Substitutions in the approved Waterfront Development Plan; (iii) whether, in the context of the approved Waterfront Development Plan, the Project will serve or contribute to a proper public purpose and provide greater benefit than detriment to the public rights in the subject tidelands; and (iv) in the case of proposed Projects in the DPA portion of the Special Planning Area, whether the proposed Project will result in the required seventy-five (75%) standard described in Section 3.2 above being met. The DEP shall meet with Massport and its tenant, if applicable, to collectively determine the application of the performance criteria and calculation of the 75% requirement. In the event a dispute arises regarding the application of the performance criteria and/or the calculation of the 75% requirement that, after reasonable efforts to negotiate, the parties hereto cannot resolve, said parties hereby agree to pursue mediation, by hiring a mutually acceptable mediator from a agency or firm engaged in the provision of professional mediation services. In the event the parties cannot agree on the same mediator, then upon request of either party, each party shall

designate a mediator within seven (7) days after such a request to designate has been made and the two mediators so designated shall choose a third mediator to conduct the mediation and such choice shall be binding on the parties. If a party fails to designate a mediator as heretofore provided, then the mediator selected by the other party shall be the designated mediator. Mediation shall be undertaken and completed as soon as possible but in no event later than sixty (60) days after the close of the applicable public comment period. The parties shall share equally any costs of mediation.

5.6. Issuance of License. Within sixty (60) days after the close of the applicable public comment period, the DEP shall take action on the Application. Except for temporary licenses, which shall be no more than 10 years, or unless a shorter term is otherwise requested by Massport, the DEP shall issue a license for the Project with a term of sixty-five (65) years, provided it has determined that the requirements of Section 5.5 have been met. Licenses with terms up to ninety-nine (99) years may be issued by DEP if requested by Massport, provided such extended term is deemed appropriate by the DEP in accordance with 310 CMR 9.15(1)(b)(2), (4) and (5), and 9.15(1)(c). Massport may propose a license term for any Project in the applicable Waterfront Development Plan. Any license so issued by DEP shall be recorded in accordance with Section 9.18 of the Regulations.

5.7. Appeals. The appeal of the grant or denial of any license by DEP pursuant to the terms of this MOU shall be governed by and subject to the provisions of Sections 9.17 of the Regulations. The standard for review of any appeal for a license issued pursuant to a Waterfront Development Plan hereunder shall be whether the proposed Project meets the criteria set forth in Section 5.5. For Projects licensed under Section 5.8 hereof, the standard of review of shall be those set forth in the Regulations.

5.8. Projects Outside Approved Waterfront Development Plan Area. If a Project subject to this MOU pursuant to Article 2 hereof, but is not within an area for which a Waterfront Development Plan has been approved, Massport or its tenant shall file an application with the DEP in accordance with Section 5.2, 5.3 and 5.4 hereof. Within 30 days of the applicable comment period, DEP shall review the application to determine compliance with Applicable Regulatory Performance Standards and 9.54 of the Regulations and shall issue a license therefor.

5.9. Emergency Actions. In the event of an emergency situation, as defined in Section 9.20 of the Regulations, Massport and DEP agree to follow the requirements set forth in said Section 9.20 for Massport Projects subject to this MOU pursuant to Section 2.1 hereof. For Projects exempt from this MOU pursuant to Section 2.2 hereof, Massport may take any

action it deems necessary and desirable in connection with an emergency situation, provided it so notified the DEP in writing within ten (10) days thereafter of such action taken.

5.10. Maintenance, Repair and Minor Project Modification. The provisions of Section 9.22 of the Regulations shall apply to maintenance, repair and minor projects modifications for Projects subject to this MOU pursuant to Section 2.1 hereof. Maintenance, repair and minor project modifications for Projects exempt from this MOU pursuant to Section 2.2 hereof shall be made by Massport in its sole discretion, without notice to the DEP.

5.11. Removal of Previously Licensed Structures. The provisions of Section 9.27 of the Regulations shall apply to removal of structures licensed pursuant to this MOU. The removal of structures exempt from this MOU pursuant to Section 2.1 hereof shall be made by Massport in its sole discretion, without notice to the DEP.

5. 12. Enforcement. The provisions of Section 9.08 of the Regulations shall apply to all Projects subject to the terms of this MOU pursuant to Section 2.2 hereof.

Article 6
Miscellaneous

6.1. Binding Effect. This MOU is a legally binding document having the full force and effect of the law between the parties and shall be enforceable by the signatories hereto in a court of law by equitable relief.

6.2. Applicable Law. This MOU shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts.

6.3. Entire Agreement. This MOU sets forth the entire agreement of the parties hereto with respect to the subject matter contained herein, and no amendment of this MOU shall be effective unless it is in writing and signed by both parties to this MOU. The draft text of any amendment shall be published in the *Environmental Monitor* for a 30 day public review and comment period, and the text shall be published therein upon adoption and made available by the DEP upon request.

6.4. Effective Date of MOU. The terms and provisions of this MOU shall become effective immediately upon execution by the Commissioner of DEP and by a Massport Officer duly authorized by the Massport Board of Directors and no further action shall be required by the parties hereof.

6.5. No Waiver. The parties agree that nothing in this MOU shall be construed to constitute assent to or assertions by either party that Massport, its agents, tenants, successors or assigns is or is not subject to the jurisdiction or regulatory authority of the DEP for licenses and permits for filling, dredging, building of structures or excavating within the Port of Boston or is otherwise subject to the requirements of Ch. 91 or the Regulations.

6.6. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed delivered hereunder if mailed postage prepaid, or delivered by hand to the following address, or to such other individual or address as may be specified by either of the parties in writing:

If to the DEP:
Commonwealth of Massachusetts
Department of Environmental Protection
One Winter Street
Boston, MA 02108
Attention: Commissioner
Attention: Director, Waterways Program

If to Massport:
Massachusetts Port Authority
Logan Office Center
One Harborside Drive
East Boston, MA 02116
Attention: Executive Director

with a copy to:
Massachusetts Port Authority
Logan Office Center
One Harborside Drive
East Boston, MA 02116
Attention: Chief Legal Counsel

6.7. Paragraph Heading. The paragraph headings in this MOU are for convenience and reference only, and shall not be used to interpret, clarify, limit or amend the contents or meaning of any provision.

IN WITNESS WHEREOF, the Executive Director of the Massachusetts Port Authority, and the Commissioner of the Commonwealth of Massachusetts Department of Environmental Protection have executed this Memorandum of Understanding as of the date first written above.

MASSACHUSETTS PORT AUTHORITY

/s/
Virginia Buckingham
Executive Director

Approved as to Form:

Karen /s/ Nober
Chief Legal Counsel

DEPARTMENT OF ENVIRONMENTAL PROTECTION

/s/
Lauren Liss
Commissioner

Approved as to Form:

Pamela D Harvey
Counsel to the Commissioner

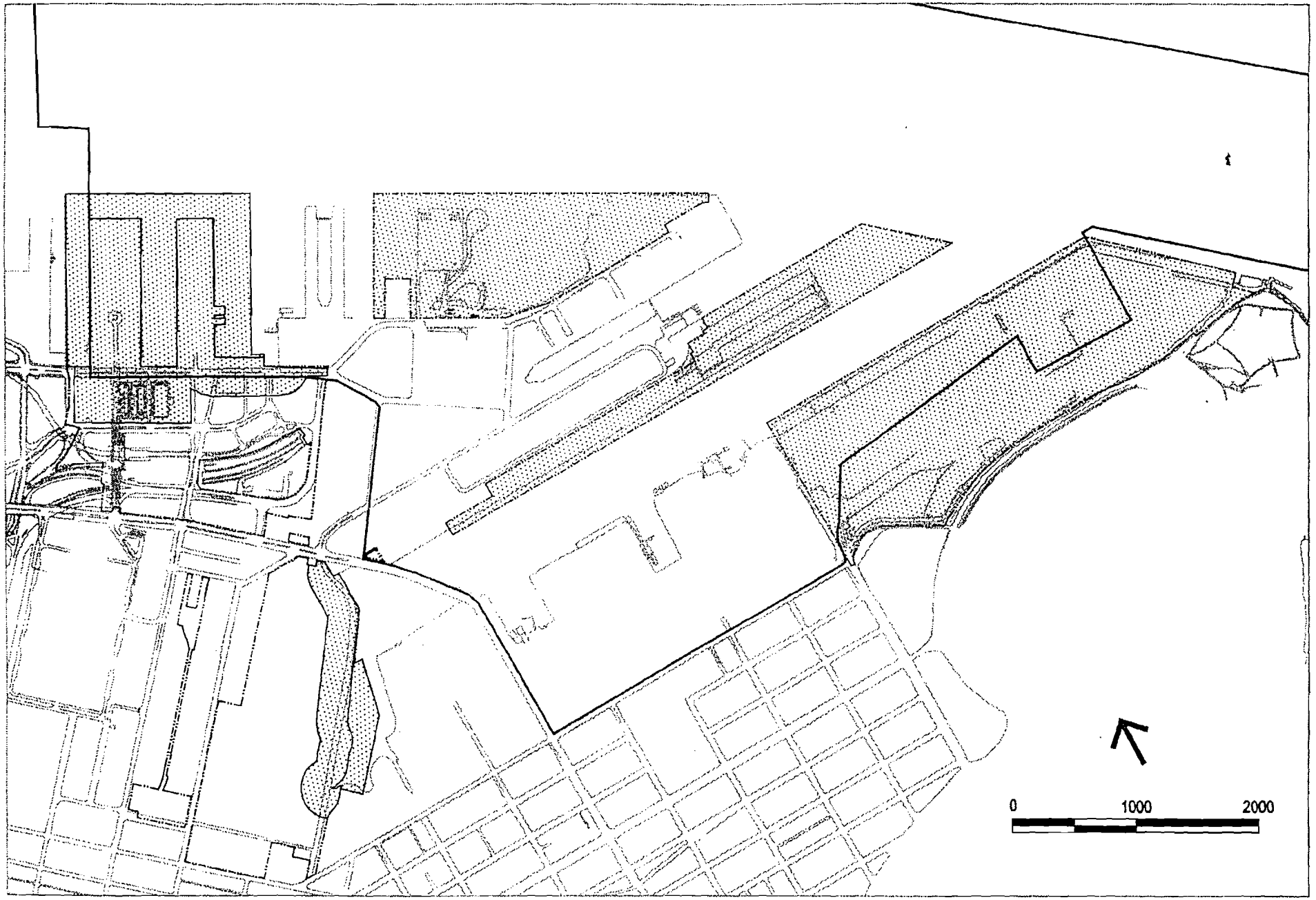


Exhibit A: Massport Properties
Subject to the DEP-MPA MOU

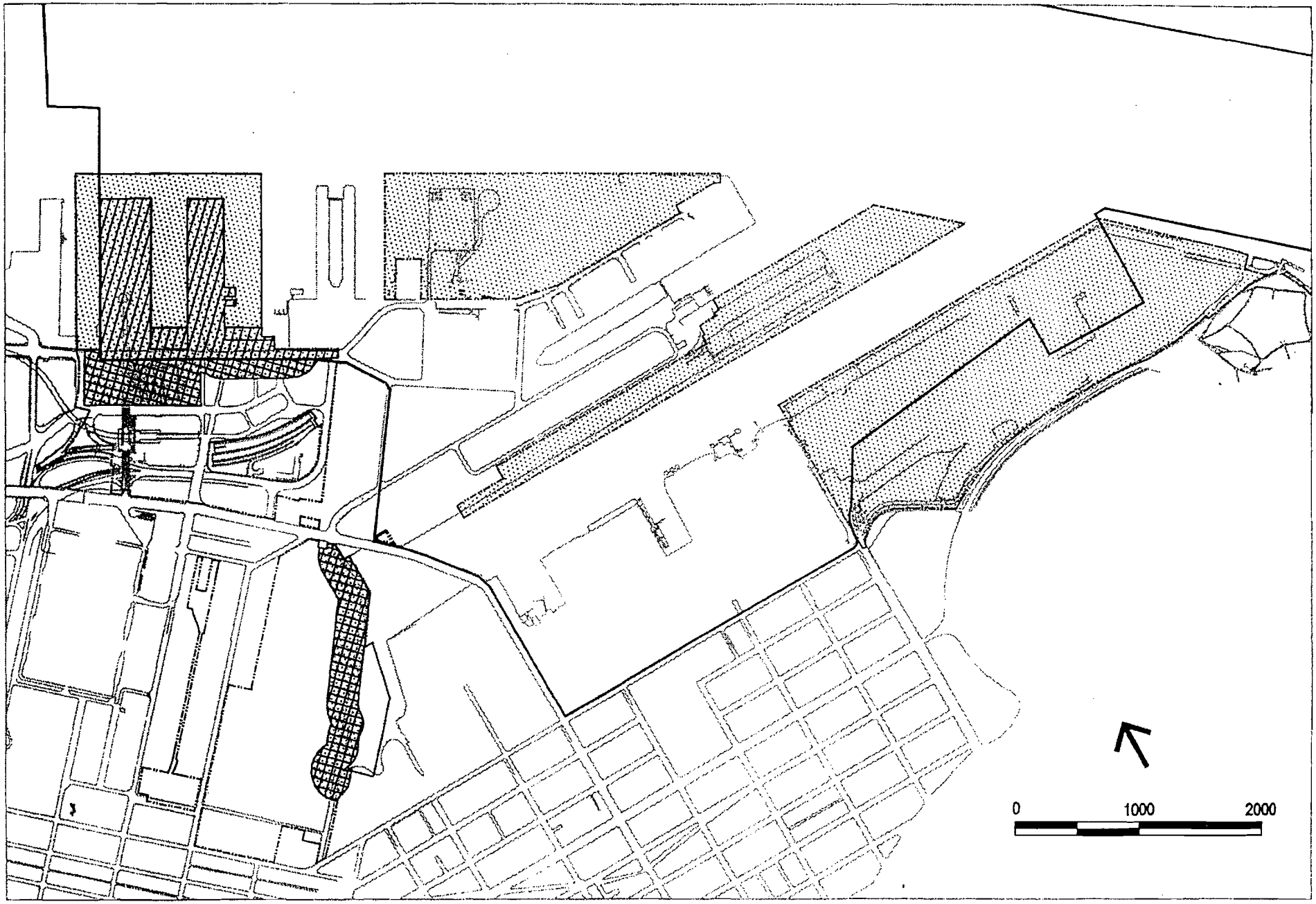


Exhibit B: Special Planning Areas

Special Planning Area within DPA

Special Planning Area outside DPA

Designated Port Area Boundary

Approximate Massport Property Line

Massport Properties Covered by the DEP-MPA MOU

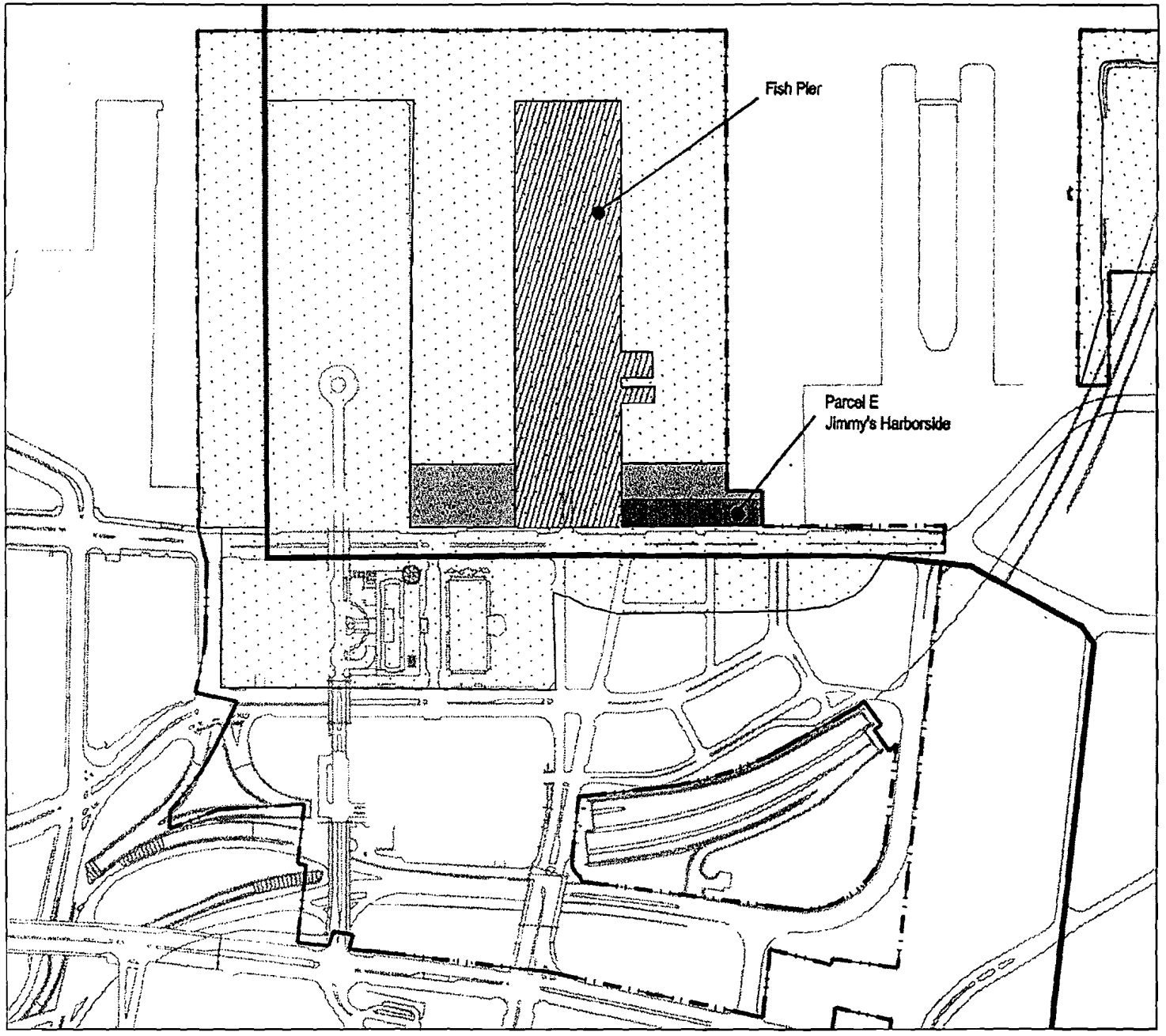


Exhibit C: Detail of Commonwealth Flats Waterfront

Appendix B

Response to Public Comments
Parcel K Draft Northern Avenue Waterfront Development Plan Amendment

Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128-2909
Telephone (617) 568-5000
www.massport.com

October 10, 2014

Mr. Benjamin Lynch
Ms. Andrea Langhauser
Massachusetts Department of Environmental Protection
Waterways Regulation Program
One Winter Street, 6th Floor
Boston, MA 02108

Subject: Response to Public Comments
Parcel K Draft Northern Avenue Waterfront Development Plan Amendment
South Boston, Massachusetts

Dear Mr. Lynch and Ms. Langhauser:

On behalf of the Massachusetts Port Authority (Massport), I am pleased to submit the following response to comments received on the *Parcel K Draft Northern Avenue Waterfront Development Plan Amendment* dated June 30, 2014 (Amendment), with Supplemental Information dated August 15, 2014. Availability of the Amendment was published in the *Environmental Monitor* and the *Boston Herald* on July 23, 2014. This was followed by a 45-day public comment period that included a Public Hearing held at your offices on August 20, 2014.

No testimony was offered at the Public Hearing, and four comment letters were submitted prior to the conclusion of the public comment period on September 10, 2014. The comment letters are included herein, as are Massport's written responses to the comments.

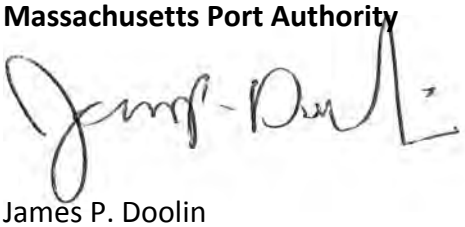
In addition to the comments supporting the overall amendments, there were several detailed comments that are specific to the development project proposed for Parcel K, rather than to the requested Amendment. We believe that these project-specific comments are more appropriately addressed in the ongoing MEPA process or through the forthcoming Chapter 91 review. Accordingly, we have focused our responses to the comments pertaining to the proposed use and building height.

Mr. Benjamin Lynch
Ms. Andrea Langhauser
October 10, 2014

Thank you very much for your review of the attached materials. If you would like to discuss our responses or any aspect of the amendment request, please contact Juan Carlos Loveluck at 617-568-3109 or Stewart Dalzell at 617-568-3524.

Sincerely,

Massachusetts Port Authority



James P. Doolin
Chief Development Officer

Attachments: Annotated comment letters
Massport response to comments

cc: J. Loveluck, S. Dalzell/Massport
L. Cabral/Parcel K LLC
A. Magee/Epsilon Associates

RESPONSE TO WRITTEN PUBLIC COMMENTS

MASSPORT DRAFT NORTHERN AVENUE WATERFRONT DEVELOPMENT PLAN AMENDMENT

The following section provides responses to the comment letters that were received on the Draft Northern Avenue Waterfront Development Plan Amendment and associated Supplemental Information submitted to the Massachusetts Department of Environmental Protection Waterways Regulation Program (MassDEP) on June 30, 2014 and August 15, 2014. The comment letters have been reproduced and individual comments coded in the margins. Responses to the comments follow each individual letter and can be matched using the comment code numbers.

Comment letters on the Draft Northern Avenue Waterfront Development Plan Amendment and associated Supplemental Information were received from the following entities:

- Blue Hills Bank Pavilion (BHBP)
- Boston Freight Terminals (BFT)
- Legal Sea Foods (LSF)
- The Boston Harbor Association (TBHA)

Blue Hills Bank Pavilion (BHBP)

BHBP.1 **Please know that we support Massport's amendment to the NAWDPA. As we understand it, the amendment allows for future consideration of a mixed-use project on the Parcel K that may include residential and hospitality uses and that the amendment allows buildings to be constructed on Parcel K to a height of not more than 140 feet.**

The type of development program being contemplated will further enhance and strengthen the vitality of the NAWDPA and will create amenities that complement our business and the local economy.

Massport appreciates the support of the Blue Hills Bank Pavilion and believes that the development that has occurred to date in the Northern Avenue WDP area has indeed been a support to businesses such as the Blue Hills Bank Pavilion, as well as the businesses and maritime industries further to the east within the BMIP. As noted in the Amendment submittal, the proposed amendments to the Northern Avenue WDP will allow for re-development of Parcel K in a manner that (1) protects and promotes area maritime facilities and businesses, (2) recognizes and is consistent with the prior planning efforts conducted for this area, (3) continues to recognize the transitional setting of Parcel K in relation to its harbor front location, and (4) incorporates the experience gained subsequent to the development of the Northern Avenue WDP and the completion of prior planning efforts.

Boston Freight Terminals (BFT)

BFT.1 **…the Amendment will allow residential use to be a part of any future project on Massport's Parcel K and will also allow for building heights of up to 140 feet. Massport and the City of Boston have taken great care to insure that Massport South Boston Haul Road is not negatively impacted by any future project on this parcel.**

Please know that I am in full support of Massport's amendment.

Massport appreciates the support of Boston Freight Terminals and notes that the terminals are located within the BMIP and are highly dependent upon a well-functioning Massport South Boston Haul Road. As noted by the commenter, Massport has indeed taken, and will continue to take, great care to insure that any and all projects in the Northern Avenue Waterfront Development Plan area and the Commonwealth Flats Development Area protect, support, and advance both the marine industrial businesses and industries of the Port of Boston and the infrastructure upon which they depend.

Legal Sea Foods (LSF)

LSF.1 **I understand that the Department of Environmental Protection is hosting a public meeting on August 20 to review the amendment to the Northern Avenue Waterfront Development Plan that Massport recently filed. It proposes the allowance of residential use in any future development of Parcel K, located on Northern Avenue, across the street from the Blue Hills Bank Pavilion.**

I cannot attend the meeting due to other obligations, but I am strongly in favor of the amendment. I encourage you to expedite the review process so that a very large surface parking lot can be transformed into a development project that befits the unique locale and enhances the community.

Massport appreciates the support of Legal Sea Foods and agrees that the proposed amendments will be of benefit to the locale and community therein. As described in the Amendment submittal, the proposed amendments to the Northern Avenue WDP will allow for re-development of Parcel K in a manner that (1) protects and promotes area maritime facilities and businesses, (2) recognizes and is consistent with the prior planning efforts conducted for this area, (3) continues to recognize the transitional setting of Parcel K in relation to its harbor front location, and (4) incorporates the experience gained subsequent to the development of the Northern Avenue WDP and the completion of prior planning efforts.

The Boston Harbor Association (TBHA)

TBHA.1 … the submission is inconsistent with Massport's leadership's efforts in protecting and promoting the Working Port. We ask that additional information be required on ways to protect and promote the Working Port and the City's Boston Marine Industrial Park as a result of the proposed changes.

Massport respectfully disagrees that the WDP amendment submission is inconsistent with our efforts to protect and promote the Working Port. The proposed amendment will allow the development of Parcel K to proceed in the current market cycle allowing timely additional ground lease revenues to be available to Massport in direct support of its investments in the Working Port. Additionally, Massport has succeeded in ensuring that all types of development on its property, including residential uses, are developed and managed in a manner that is consistent with and protective of the needs of the Working Port, particularly with respect to its transportation needs. As an example of our proactive approach in this regard, Massport required changes to the Parcel K project design to switch the location of the residential use away from the Massport Haul Road. We have already imposed conditions on the development of Parcel K similar to the conditions imposed on other residential projects (prohibition on ground level residential use, maximum apartment lease terms of two years, maximum interior noise levels of 45 dBA (Ldn), waivers acknowledging port activities as part of every apartment lease) through the Development Agreement and such terms will be included in the Parcel K ground lease as well. Supporting details on measures to protect and enhance the Working Port are discussed in the additional responses below.

TBHA.2 <u>Reinforcement of the Working Port</u>: The submission does not indicate how the project will minimize both pedestrian and non-commercial vehicles from negatively impacting the Massport Haul Road.

The proposed amendment to the Northern Avenue Waterfront Development Plan (WDP) would allow for residential development on the western, Parcel K-1 portion of Parcel K. The amendment also proposes an increase in allowable building height from 100 feet to 130 feet on the limited portion of Parcel K-2 that lies within the Northern Avenue WDP area, and from 100 to 140 feet on the reminder of Parcel K-2. These heights would be consistent with those for Parcel K-1 as established in the existing Northern Avenue WDP.

As with the existing WDP, with the proposed amendments in place, any development of Parcel K will need to demonstrate that it will protect and promote area maritime facilities and businesses and not adversely affect the use of Massport Haul Road and, more specifically, the commercial and industrial use of Massport Haul Road by the businesses and industries of the Boston Marine Industrial Park (BMIP) and the working port in general. Massport believes that proposed use and height amendments will allow Parcel K development to proceed in a way that both protects the key working port elements

but also enhances the financial contributions to Massport's maritime facilities. More specifically, Massport is facing financial challenges in the next few years with respect to its planned improvements to Conley Terminal. Residential use is one of the strongest opportunities in the real estate market currently and thus provides the best chance to make significant contributions of ground lease revenue towards Massport's maritime mission in the shortest time frame.

While there is a specific development proposal for Parcel K, the current review is for the proposed WDP amendment and not the current development proposal. That project-specific review will occur through the recently initiated Massachusetts Environmental Policy Act (MEPA) process and the ensuing Chapter 91 License review.

A key component of the MEPA and Chapter 91 reviews will be the demonstration that the specific project proposed for Parcel K does not impact the marine industrial use of Massport Haul Road and, more specifically, the commercial and industrial use of Massport Haul Road.

The Draft Amendment submittal included information on a proposed mixed-use development project for Parcel K. That project (the Parcel K Project) has undergone City of Boston Article 80 review and, after extensive agency and public review, received a unanimous vote of approval by the Board of the Boston Redevelopment Authority. The traffic analysis submitted as part of the Article 80 review clearly demonstrated that the Parcel K Project would not adversely impact use of Massport Haul Road and, indeed, will have less impact than the uses of Parcel K analyzed and approved through the CFDA EIR processes. The Parcel K Project must now undergo both MEPA review and Chapter 91 licensing where this and other issues associated with the actual Parcel K project will be fully re-investigated and reviewed.

It is important to note that while the proposed Northern Avenue WDP Amendment is supportive of the Parcel K Project, it in no way or manner lessens the burden upon the Parcel K Project, or for that manner any project proposed for Parcel K, to demonstrate (1) that it will not impact the operations of the BMIP and the working port, (2) that it will not materially impact the infrastructure supporting those marine operations, (3) that it will comply with prior planning for the area, and (4) that it be able to obtain and abide by all necessary approvals under local, state and federal law.

TBHA.3 If residential use is allowed, Massport has indicated that it will impose the following restrictions:

- **Prohibition on residential uses on the ground floor;**
- **Maximum apartment lease term of two years;**

- **All residential spaces shall be constructed to have an interior noise level of not more than 45 dB(A);**
- **Requirement that all apartment tenants sign a written acknowledgment of their proximity to the Working Port, including the Fish Pier, adjacent truck routes, and Logan Airport, and acknowledging that the Working Port and the Airport operate 24/7 and emit noise and other impacts.**

In any decision on this Amendment, we strongly urge the Department to require Massport to incorporate the above restrictions into all of its residential projects, as well as to require that all tenants (commercial and otherwise), hotel operator, management entity, and so on acknowledge their proximity to the Working Port and its potential impacts of noise, vibrations, emissions, and other impacts

Massport is committed to the protection, support and advancement of the working port and because of this commitment, has already included these requirements and restrictions in existing residential development ground leases on its property in South Boston. These same requirements and restrictions are incorporated into Massport's request for an Amendment to the Northern Avenue WDP.

TBHA.4 **We further ask that tenants, hotel operators, management entities, and others be specifically required to indicate in lease documents that they will not engage in any activity to alter existing truck routes of the Working Port.**

In any Department decision on this proposed Amendment, we strongly urge the Department to prohibit owner-occupied residential units such as condominiums or cooperatives on this site.

Massport is agreeable to the adoption of reasonable additional restrictions under the Northern Avenue WDP Amendment. These restrictions will need to be implemented via ground leases, as Massport does not typically have agreements with hotel operators, management entities, etc.

TBHA.5 **<u>Transportation</u>: A parking facility with 640-spaces is proposed. A number of 21st century projects along the water do not provide parking. … Consistent with the City of Boston's proposed 2014 Climate Action Plan, we strongly urge that the number of parking spaces for the 304 rental apartments and 247 hotel rooms be**

significantly reduced, and that a large proportion of the remaining parking spaces be set aside for cruise passengers leaving from nearby Black Falcon Cruise terminal. All others should be strongly urged to utilize the MBTA Silver Line one-block away, nearby Hubway station, and Massport's water transportation facility at the World Trade Center.

Both above ground and underground parking facilities are an allowable uses under the existing Northern Avenue WDP. The Northern Avenue WDP Amendment does not include any changes to parking requirements.

The merits and scale of a project-specific underground parking garage on Parcel K will be appropriately reviewed during the MEPA and Chapter 91 licensing processes for that project and independent of the current request for Amendment. That said, the proposed parking garage is consistent with Massport's past Commonwealth Flats Development Area (CFDA) planning and permitting efforts, which established an overall parking ratio for the CFDA at full build-out, and which identified Parcel K as a site suitable for an aggregated public parking supply, balancing and supporting other Massport CFDA development sites which are unable to meet their own parking needs on site. The Parcel K project proposes 276 spaces be dedicated to site use; the resulting parking ratios of approximately ½ parking space per apartment unit and per hotel room reflect the project's urban location and proximity to transit. The remaining 364 spaces will be available to the public and surrounding CFDA businesses, including Liberty Wharf, Parcel H, the Blue Hills Bank Pavilion, and those of the BMIP and Innovation District, consistent with prior planning for parking within the CFDA. Massport does not believe that Parcel K is an optimal parking location for cruise operations and is working to improve parking for its Cruiseport Boston facility at better suited locations.

TBHA.6 ….we ask that the proponent quantify the increase in lease payments and other revenues to finance and support additional maritime improvements from the proposed change, specifically, the delta in additional revenues between the existing allowed uses and the proposed new uses. We would also ask that the proponent specify what the additional improvements will be as a result of the proposed change.

Massport relies on revenues from its real estate assets to contribute towards the operating and capital needs of the Port. Massport does not account for each dollar received in ground rent and how that dollar was spent on the Port, and thus could not account for the use of revenues received from Parcel K with this level of specificity. Likewise the "delta" in revenues from a project under the existing allowed uses and the proposed new uses is not available. Rather, it is likely that a project conforming to the existing WDP requirements would occur at a later time, when the market justified an

office use at this location. It is not possible to state with any level of accuracy when this might be, but it could well be 5 to 20 years away. Thus, the "delta" is really the difference between continued use as open air parking and a development like that now being reviewed under MEPA. Massport stands to receive substantially more revenue from a fully developed Parcel K than from a Parcel K used for open-air parking. More importantly, the growth in revenue over time will be much greater. Also, Massport is looking to bolster its revenue stream from real estate development to support investments in Conley Terminal which are occurring in the next few years, so near-term increases in ground lease revenue are seen as beneficial to Massport's maritime mission.

TBHA.7 …we ask that the proponent be required to specify what additional commercial and retail amenities will be provided to the maritime industries in the BMIP, and what the maritime industries would forego if these changes are not approved.

Massport expects that any development of Parcel K, either with a residential component, as would be permitted under the proposed WDP amendment, or as an office development as permitted under the existing WDP, would offer an array of retail and restaurant uses available to the public at large, including users originating in the BMIP.

Since residential uses are not allowed within the BMIP, housing built within the CFDA provides an option for those BMIP employees who may desire to live proximate to their jobs with all the attendant benefits of being able to walk or bike to work, and to "go carless," as many city residents do.

Market conditions for residential apartments are currently favorable; this is not currently the case for speculative office development. Therefore the principal impact of the proposed amendment not being approved is likely to be a substantial delay in the development of Parcel K, anywhere from 5 to 20 years. This would delay the provision of additional retail amenities on the site, and, more critically, would reduce the additional revenue stream to Massport in the near term compared to what would be achieved from the near-term development of Parcel K, with attendant negative impacts on Massport's ability to finance its planned improvements to Maritime infrastructure, particularly planned upgrades to Conley Terminal.

TBHA.8 To offset the adverse impacts, the proponent proposes two things: first, to provide an additional half foot of public open space for every foot of net new shadow impact, and second, to count Massport's existing South Boston Waterfront Park constructed in 2004 as an early-

action community benefit which was intended to serve as a "mitigation bank" for future development, including Parcel K.

TBHA is correct in noting that the creation of the South Boston Maritime Park was an early community benefit and that the Park was established as a mitigation bank for future development within the Northern Avenue WDP area. Massport invested over $6 million in the design and construction of the South Boston Maritime Park. Completed in 2004, the Park has been providing open space benefits to this evolving community well in advance of the impacts it was designed to offset, including that of Parcel K development. Parcel K is the last site within the WDP area that would be eligible to use this mitigation bank.

In initially developing the Northern Avenue WDP there was a conscious effort by Massport to create a cohesive building strategy, rather than follow a piecemeal development approach. To address area open space needs, the WDP included the creation of the Massport South Boston Maritime Park with multiple connections to the WDP area by pedestrian-friendly walkways and sidewalks. This concept replaced the standard requirement that each of the four parcels simply include 50 percent open space on-site. In applying this approach, approximately 115,400 square-feet of open space was created in association with the Northern Avenue WDP, as compared to the approximately 71,900 square feet that would have been created had the parcels within the plan area been assessed individually under the regulatory provisions of Chapter 91. The result of this approach was a larger, more significant community open space and one that was completed and opened well in advance of when smaller public spaces associated with individual development parcels would have been constructed. Massport's South Boston Maritime Park just celebrated its 10th anniversary.

TBHA.9 …to suggest that the additional height and its adverse shadow impacts can be offset by an existing park built and operated by the Massachusetts Port Authority since 2004 is inconsistent with the planning for the park more than a decade ago.

…In any Department decision on this proposed Amendment, we strongly urge that the Department require the proponent to provide 10,907 square feet of new open space to offset the 10,907 square feet of net new shadow at a 1:1 ratio. Alternatively, the project should work to reduce the net new shadow impacts through a different building footprint or building orientation.

The assessment of additional building height is fully consistent with the planning for the South Boston Maritime Park more than a decade ago. The park is specifically identified in Section 2.6.2, "*Additional Public Open Space Offset*," of the August 2001 Final Northern

Avenue WDP as including 26,390 square feet of open space available for the mitigation of potential shadow impacts from future projects located within the WDP area.

Section 2.6.2 of the Northern Avenue WDP states, …"*the WDP requires that an additional one-half (.5) square foot of exterior open space be provided for every square foot of net new shadow impact on public open space, the Water-Dependent Use Zone, or the watersheet caused by the proposed project as compared to the shadows created by the Baseline Conditions…*".

Section 2.6.2 of the Northern Avenue WDP goes on to identify the mitigation area as including the "*area on Figure 22 marked in dark green and labeled in the key "Open Space Beyond Chapter 91 Jurisdiction for Offset"…*", or, more specifically, the 26,390 square feet of the Massport South Boston Maritime Park lying beyond, but contiguous to, the Northern Avenue WDP area. A copy of the above-referenced Figure 22 is included as Figure 2 of the Supplement Information document.

While it is unlikely that any project-specific design would achieve the building massing outlined in the proposed Amendment, the WDP specifically provided that a portion of the Park's open space would be available to offset the shadow impacts of development within the WDP area, including those from Parcel K. Those public benefits have now been in place for a decade and likely exceed the requirements of any specific development on Parcel K. This topic will be addressed on a project-specific basis (which will include a more accurate assessment of the actual shadow impacts of the Parcel K development) in the forthcoming MEPA and Chapter 91 processes.

TBHA.10 **<u>Open Spaces</u>: The submission indicates that the sidewalks will provide space for an outdoor cafe and public seating, and that there will be a 4th floor green roof and an elevated courtyard terrace (page 3-3; Figure 3-4). It is not clear how much of the 50% on-site open space is "green" open space for recreational usage versus roads and sidewalks for passage. We ask that this be clearly delineated, and that terrace and other "green" open spaces be required to be available to the general public. External signage should be installed indicating the presence of such open spaces for the general public's use and enjoyment, as well as public rest rooms for the general public, regardless of patronage.**

This comment is specific to the Parcel K Project, and not the proposed Amendment to the Northern Avenue WDP. The Northern Avenue WDP offers a planning framework for the development of parcels located within the CFDA that also lie within the jurisdiction of Chapter 91 licensing. The Plan does not specify project design to the degree of specificity implied by the commenter. That said, these issues do need to be addressed

for specific projects within the Plan area, and will be done so through the MEPA and Chapter 91 licensing processes.

TBHA.11 **<u>Operations and Maintenance</u>: We ask that the proponent be required to provide an operations and maintenance plan for the project's interior and exterior public spaces for the public's use, as well as the signage plan for these spaces. The draft plans should be circulated to all commenters for their comments and suggestions.**

An O&M plan for a specific project on Parcel K would be outlined in the MEPA process and finalized through the Chapter 91 licensing process.

Blue Hills Bank Pavilion
290 Northern Avenue
Boston, MA 02210

TEL: 617-728-1623
FAX: 617-737-2292

Andrea Langhauser
Massachusetts Department of Environmental Protection
Waterway Regulations Program
One Winter Street, 5th Floor
Boston, MA 02108

Dear Ms. Langhauser,

I am aware that Massport has been considering a mixed-use development project on the Parcel K site, which is directly across Northern Avenue from Blue Hills Bank Pavilion. I am also aware that Massport and DEP have established a process for review of projects to be developed within the Northern Avenue Waterfront Development Plan Area (NAWDPA) in which Parcel K is located, and that Massport recently filed an amendment to that Plan.

Please know that we support Massport's amendment to the NAWDPA. As we understand it, the amendment allows for future consideration of a mixed-use project on the Parcel K that may include residential and hospitality uses and that the amendment allows buildings to be constructed on Parcel K to a height of not more than 140 feet. **BHBP.1**

The type of development program being contemplated will further enhance and strengthen the vitality of the NAWDPA and will create amenities that complement our business and the local economy.

Sincerely,

James Jensen, General Manager
Blue Hills Bank Pavilion

Cc: Don Law
Doug Borg
Lou Cabral

BOSTON FREIGHT TERMINALS

At The International Cargo Center of New England

1 Harbor Street
Boston, MA 02210

Tel: 617-482-6222
Fax: 617-482-2909

Andrea Langhauser
MassDEP
One Winter St., 5th Floor
Boston, MA 02108

August 18, 2014

Dear Ms. Langhauser,

It is my understanding that MassDEP is accepting comments on a proposal by the Massachusetts Port Authority to amend the Northern Avenue Waterfornt Development Plan. Specifically, the amendment will allow residential use to be part of any future project on Massport's Parcel K and will also allow for building heights of up to 140 feet. Massport and the City of Boston have taken great care to insure that South Boston Haul Road is not negatively impacted by any future project on this parcel. **BFT.1**

Please know that I am in full support of Massport's amendment.

Sincerely,

Neil Fitzpatrick
President

Roger Berkowitz, *President & CEO*

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August 18, 2014

Andrea Langhauser #2
MassDEP
Waterway Regulations Program
One Winter St. 5th Floor
Boston, MA 02108

Dear Ms. Langhauser;

I understand that the Department of Environmental Protection is hosting a public meeting on August 20 to review the amendment to the Northern Avenue Waterfront Development Plan that Massport recently filed. It proposes the allowance of residential use in any future development of Parcel K, located on Northern Avenue, across the street from the Blue Hills Bank Pavilion. **LSF.1**

I cannot attend the meeting due to other obligations, but I am strongly in favor of the amendment. I encourage you to expedite the review process so that a very large surface parking lot can be transformed into a development project that befits the unique locale and enhances the community.

Thank you for your consideration. Please feel free to contact me if elaboration on my comments would be helpful.

Sincerely,

Roger S. Berkowitz
President & CEO

10 September 2014

Commissioner David Cash
Department of Environmental Protection
One Winter Street
Boston MA 02108
ATT: Ben Lynch

RE: Draft Northern Avenue Waterfront Development Plan Amendment
Parcel K, Northern Avenue, South Boston

Dear Commissioner Cash:

The Boston Harbor Association, a non-profit, public interest organization founded in 1972 by the League of Women Voters and the Boston Shipping Association to promote a clean, alive, and accessible Boston Harbor, is in receipt of the Draft Northern Avenue Waterfront Development Plan Amendment, Parcel K, Northern Avenue, South Boston, filed on behalf of the Massachusetts Port Authority on 30 June 2014 and 15 August 2014. Since the late 1990s, The Boston Harbor Association has closely monitored the planning and development of Massport's Commonwealth Flats Development Area, including Parcel K which is bounded by Northern Avenue, Massport Haul Road, Starboard Lane, and Congress Street.

During the planning for Commonwealth Flats Development Area, Parcel K was identified as a "transitional site" (page 2-2 of 30 June 2014 Amendment) between the commercial development to the west and maritime industrial uses to the east. In response to concerns by maritime industrial users and advocacy organizations including The Boston Harbor Association regarding potential conflicts between residential uses and truck routes, Massport agreed in 2001 to a prohibition on residential uses on any part of Parcel K and agreed to a reduction in maximum height next to the Massport Haul Road.

Massport is now requesting two changes to the existing 2001 Northern Avenue Waterfront Development Plan: allowing residential use on the K-1 portion of the site; and increasing the height from 100 feet as agreed to in the 2001 Northern Avenue Plan to 130 feet on the K-2 portion of the site within Chapter 91 License jurisdiction and up to 140 feet on the remainder of the parcel. This would allow for the construction of 304 rental apartments in an 11-story building on the western, K-1 portion of the site; a 247-room, 10-story boutique hotel along the eastern, K-2 perimeter of the site; 16,500 square feet of "innovation" flex office space on the southern edge of the site; 20,000 square feet of retail and restaurant space; open space for cafes and public seating; and a 640-space parking facility.

The Boston Harbor Association's comments follow:

Relationship to the Working Port: The Massachusetts Port Authority, under its current CEO Tom Glynn and current Board of Trustees, is strongly committed to the Port of

Boston and maritime industrial uses. On 21 July 2014, Massport and The Boston Harbor Association co-sponsored a standing-room only Port of Boston Breakfast Panel Discussion where Massport released its Port of Boston Economic Impact Report indicating the importance of the Port to the regional economy. Thanks to the diligent work of Massport leadership and staff, earlier this summer, more than $200 million was earmarked in federal appropriations to support the dredging of Boston Harbor.

The Draft Northern Avenue Waterfront Development Plan Amendment, as prepared by consultants, does not adequately acknowledge the importance of the Working Port or the potential impacts of the proposed change on the Port and truck routes. Rather, the proposed changes are advocated to support the Innovation District, with minimal consideration of impacts to the Working Port and the Boston Marine Industrial Park. For example, the document notes, "The proposed amendment to re-introduce the concept of residential use on Parcel K-1 presented herein is driven by the positive experience with residential uses within the Northern Avenue Waterfront Development Plan Area, the Commonwealth Flats Development Area and in the entire South Boston waterfront as described above, and the demonstrated protections against impacts on residential development from Port-related activities" (page 2-5 of 30 June 2014 Amendment).

As prepared by consultants, the submission is inconsistent with Massport's leadership's efforts in protecting and promoting the Working Port. We ask that additional information be required on ways to protect and promote the Working Port and the City's Boston Marine Industrial Park as a result of the proposed changes. **TBHA.1**

Reinforcement of the Working Port: The submission does not indicate how the project will minimize both pedestrian and non-commercial vehicles from negatively impacting the Massport Haul Road. At a minimum, no more than one curb cut should be allowed from the project site onto the Haul Road, and use of the curb cut should be limited only to service vehicles. Signage as well as Massport police should enforce such a limitation, and should be specified by the Department in any decision on this Amendment. **TBHA.2**

If residential use is allowed, Massport has indicated that it will impose the following restrictions: **TBHA.3**

---Prohibition on residential uses on the ground floor;
---Maximum apartment lease term of two years;
---All residential spaces shall be constructed to have an interior noise level of not more than 45 dB(A);
---Requirement that all apartment tenants sign a written acknowledgment of their proximity to the Working Port, including the Fish Pier, adjacent truck routes, and Logan Airport, and acknowledging that the Working Port and the Airport operate 24/7 and emit noise and other impacts.

In any decision on this Amendment, we strongly urge the Department to require Massport to incorporate the above restrictions into all of its residential projects, as well as to require that all tenants (commercial and otherwise), hotel operator, and management entity acknowledge their proximity to the Working Port and its potential impacts of noise,

vibrations, emissions, and other impacts. We further ask that tenants, hotel operators, management entities, and others be specifically required to indicate in lease documents that they will not engage in any activity to alter existing truck routes of the Working Port. **TBHA.4**

In any Department decision on this proposed Amendment, we strongly urge the Department to prohibit owner-occupied residential units such as condominiums or cooperatives on this site.

Transportation: A parking facility with 640-spaces is proposed. A number of 21st century projects along the water do not provide parking, including Related Beal's Lovejoy Wharf development as well as Norwich Partner's Envoy Hotel next to the Old Northern Avenue Bridge near the MBTA Silver Line. Consistent with the City of Boston's proposed 2014 Climate Action Plan, we strongly urge that the number of parking spaces for the 304 rental apartments and 247 hotel rooms be significantly reduced, and that a large proportion of the remaining parking spaces be set aside for cruise passengers leaving from nearby Black Falcon Cruise terminal. All others should be strongly urged to utilize the MBTA Silver Line one-block away, nearby Hubway stations, and Massport's water transportation facility at the World Trade Center. **TBHA.5**

Public Benefits for Nonwater-Dependent Uses: As prepared by the consultant, the submission indicates that two of the public benefits for the proposed uses include: Increase lease payments and other revenues to Massport to finance and support additional maritime improvements and operations; and Introduction of additional commercial and retail amenities to the maritime industries of the BMIP (Boston Marine Industrial Park) as stated on page 2-7 of the 30 June 2014 Amendment.

So that the Department and the general public can have a better sense of the public benefits from the proposed changes, we ask that the proponent quantify the increase in lease payments and other revenues to finance and support additional maritime improvements from the proposed change, specifically, the delta in additional revenues between the existing allowed uses and the proposed new uses. We would also ask that the proponent specify what the additional improvements will be as a result of the proposed change. **TBHA.6**

Likewise, we ask that the proponent be required to specify what additional commercial and retail amenities will be provided to the maritime industries in the BMIP, and what the maritime industries would forego if these changes are not approved. **TBHA.7**

Building Height Offset: Supplemental document dated 15 August 2014 indicates that the additional proposed height from 100 feet to 130 feet within Chapter 91 jurisdiction will result in 10,907 square feet of net new shadow as compared to the Chapter 91 baseline condition.

To offset the adverse impacts, the proponent proposes two things: first, to provide an additional half foot of public open space for every foot of net new shadow impact, and second, to count Massport's existing South Boston Waterfront Park constructed in 2004 **TBHA.8**

as an early-action community benefit which was intended to serve as a "mitigation bank" for future development, including Parcel K.

In any Department decision on this proposed Amendment, we strongly urge that, consistent with other projects along Boston Harbor, the proponent be required to provide a minimum of at least one foot of additional public open space for every foot of net new shadow impact that can not under any circumstance be avoided. The proponent's suggestion of only a half foot of public open space for every foot of net new shadow is inadequate and inconsistent with what is required of other developers.

Further, to suggest that the additional height and its adverse shadow impacts can be offset by an existing park built and operated by the Massachusetts Port Authority since 2004 is inconsistent with the planning for the park more than a decade ago. The Boston Harbor Association served on the citizens advisory committee for South Boston Maritime Park, and it was never discussed with community representatives that the park would serve as offset/mitigation for future development a decade or more later. Had that been part of the discussion, the community representatives would have pushed for more open space amenities for the South Boston community. **TBHA.9**

In any Department decision on this proposed Amendment, we strongly urge that the Department require the proponent to provide 10,907 square feet of new open space to offset the 10,907 square feet of net new shadow at a 1:1 ratio. Alternatively, the project should work to reduce the net new shadow impacts through a different building footprint or building orientation.

Open Spaces: The submission indicates that the sidewalks will provide space for an outdoor cafe and public seating, and that there will be a 4th floor green roof and an elevated courtyard terrace (page 3-3; Figure 3-4). It is not clear how much of the 50% on-site open space is "green" open space for recreational usage versus roads and sidewalks for passage. We ask that this be clearly delineated, and that terrace and other "green" open spaces be required to be available to the general public regardless of patronage. Outdoor café seating area does not constitute open space under Chapter 91 regulations, and should be noted accordingly. External signage should be installed indicating the presence of open spaces for the general public's use and enjoyment, as well as public rest rooms for the general public, regardless of patronage. **TBHA.10**

Operations and Maintenance: We ask that the proponent be required to provide an operations and maintenance plan for the project's interior and exterior public spaces for **TBHA.11**

the public's use and enjoyment, as well as a signage plan for these spaces. The draft plans should be circulated to all who comment on this Amendment for their comments and suggestions.

Thank you for your consideration.

Sincerely,

Vivien Li
President
The Boston Harbor Association

Appendix C

"Table 1 - Parcel K-1/K-2 Use Evaluation Matrix"
Final Northern Avenue Waterfront Development Plan, August 1, 2001

Final Northern Avenue Waterfront Development Plan

South Boston, Massachusetts

August 1, 2001

Submitted to:
Massachusetts Department of Environmental Protection

Submitted by:
Massachusetts Port Authority

Table 1. Parcel K-1/K-2 Use Evaluation Matrix

Potential Use	Circulation Characteristics *and Guidelines*		Other Characteristics *and Guidelines*		
	Vehicular Circulation	*Pedestrian Circulation*	*Noise Sensitivity*	*Visual Sensitivity*	*Design Features*
Office (On parcel K-2, limited to ancillary use only)	• Highest number of vehicular trips and parking demand concentrated weekdays in AM and PM peaks • Including office use within overall mixed-use development will create opportunities for walking trips • *Focus interstate access and links to downtown along Congress St.* • *Locate near public transit and supplemental shuttle buses to reduce vehicular trips* • *Locate primary parking access/egress on Congress/East Cross Sts.* • *Locate service access on Connector Rd. and schedule deliveries to reduce vehicular conflicts*	• Highest levels of pedestrian activity during weekday AM and PM peak periods • Requires safe, convenient connections to nearby retail/restaurants, open space, and public transit • *Focus pedestrian activity on the western side of K parcels along Congress St.* • *Provide pedestrian connections to nearby public transit stop on Connector Rd.* • *Incorporate building and streetscape design features to limit pedestrian activity to the east of Parcel K-1* • *Limit office use to ancillary use only on Parcel K-2*	• Low to moderate sensitivity to noise on weekdays • *Locate on upper floors to reduce noise exposure* • *Apply building construction technologies to reduce noise sensitivity* • *Limit office use to ancillary use only on Parcel K-2*	• Somewhat sensitive to visual impacts • *Locate office uses on upper floors to reduce potential visual impacts* • *Use setbacks and architectural details to reduce visual impacts* • *Limit office use to ancillary use only on Parcel K-2*	• Requires more square footage and relatively large floorplates, resulting in greater overall mass • Requires a high level of capital investment • *Limit maximum height on Parcel K-1 to 140 feet above grade* • *Locate building lobby on Congress St., away from truck routes and industrial activity*
Hotel	• Highest vehicular trip levels in off-peak periods • Frequent curbside drop-off and service vehicles • Low parking demand with week-night peak	• Highest level of pedestrian activity during weekday evenings • Requires key pedestrian connections to the BCEC, the waterfront, transit, and the mixed-	• Sensitive to noise, during weekday evenings • *Locate hotel rooms on upper floors and setback from the street to reduce noise*	• Somewhat sensitive to visual impacts • *Locate hotel rooms on upper floors and setback from the street to reduce negative visual impacts*	• Narrower dimension of floorplates on upper level room floors • Compatible with ancillary retail/ restaurant uses on the ground floor • Requires a high level

Potential Use	Circulation Characteristics *and Guidelines*		Other Characteristics *and Guidelines*		
	Vehicular Circulation	***Pedestrian Circulation***	***Noise Sensitivity***	***Visual Sensitivity***	***Design Features***
	• *Locate curbside drop-off areas on Congress St. away from the Haul Rd.* • *Locate service access on Connector Rd. and schedule deliveries to reduce vehicular conflicts*	use development immediately to the west • *Locate the building lobby on the western side of the building on Congress St.* • *Apply streetscape design elements to focus pedestrian activity to the west and away from the Haul Road and industrial areas to the east*	*exposure* • *Apply building design/construction features to reduce noise sensitivity*	• *Apply appropriate architectural details to provide visual screening*	of capital investment • *Encourage smaller building mass and larger setbacks at upper levels*
Ancillary Retail/Restaurant	• Non-destinational nature of ancillary retail/restaurant use does not attract a significant number of additional vehicular trips from beyond the immediate development area • Peak parking demand is focused in the evening • *Strengthen relationship to the nearby mixed-use development to help increase walking trip and reduce vehicular trips* • *Maximize use of shared parking resources nearby*	• Peak use at mid-day/lunchtime • Pedestrian trips tied to nearby mixed-use development to the west • *Prohibit ancillary retail/restaurant entrances within 80' of the Haul Road to limit pedestrian activity in this area* • *Apply building and streetscape design features to limit pedestrian activity to the east of Parcel K-1*	• Low noise sensitivity • *Locate ancillary retail/restaurant space on lower floors to help buffer more sensitive uses on upper floor* • *Apply building design/construction features to reduce noise sensitivity*	• Low to moderately sensitive to visual impacts at street level • *Use streetscape and building design details to help buffer ground floor ancillary retail/ restaurant uses from visual impacts*	• Most ground floor ancillary retail/ restaurant use will require higher bay heights • Requires low to moderate level of capital investment • *Include ancillary retail/restaurant use as a ground floor use with other uses above* • *Apply architectural details to the building/ streetscape to create appropriate areas for ancillary retail/ restaurant activity*

Potential Use	Circulation Characteristics *and Guidelines*		Other Characteristics *and Guidelines*		
	Vehicular Circulation	***Pedestrian Circulation***	***Noise Sensitivity***	***Visual Sensitivity***	***Design Features***
Residential (Prohibited from both K parcels)	• Peak vehicular trip levels during evenings and weekends • Creates/encourages increased transit use, walk to work, and reverse commute opportunities • Reduces weekday AM and PM peak trips • *Prohibit residential use on both K parcels*	• Peak pedestrian activity evenings and weekends • *Prohibit residential use on both K parcels*	• High sensitivity to noise, particularly during evenings and weekends • *Prohibit residential use on both K parcels*	• High sensitivity to visual impacts • *Prohibit residential use on both K parcels*	• Operable windows are preferred in residential units • Requires moderate to high level of capital investment • *Prohibit residential use on both K parcels*
Parking	• Heaviest activity during weekday AM and PM peak periods • Secondary peak in weekday evenings • Minimal service activity • Requires direct interstate and downtown access • *Designate parking to be shared between mix of uses in the immediate area of K parcels* • *Locate primary vehicular access/egress on Congress and/or E. Cross Sts.* • *Prohibit access/egress to/from structured parking on the Haul Rd.*	• Heaviest pedestrian activity in the weekday AM and PM peak periods • Secondary peak in the weekday evenings • Requires pedestrian connections to/from the BCEC, waterfront, and mixed-use development to the west • *Locate pedestrian entrances and vertical circulation within a parking structure to direct pedestrians away from the Haul Road and industrial activity* • *Apply building and streetscape design features to focus pedestrian activity to the west, away from the Haul Rd.*	• Low noise sensitivity • *Locate structured parking on Parcel K-2 to serve as a noise buffer from uses on Parcel K-1*	• Low visual sensitivity • *Locate structured parking on Parcel K-2 to serve as a visual buffer from uses on Parcel K-1*	• Requires relatively large floorplates • Requires moderate level of capital investment • *Limit maximum height on Parcel K-2 to 100 feet above grade* • *Create façade design that is responsive to adjacent uses and any significant views from a distance*

Potential Use	Circulation Characteristics *and Guidelines*		Other Characteristics *and Guidelines*		
	Vehicular Circulation	***Pedestrian Circulation***	***Noise Sensitivity***	***Visual Sensitivity***	***Design Features***
Light Industrial/ Warehouse	• Weekday focus, mostly truck activity • Single or limited multi-tenant trucking activity requires loading docks off of the Haul Rd. • Requires direct connections to Haul Rd. and other truck routes • *Limit new curb cuts/building access on Haul Rd. for truck deliveries and related employee parking*	• Low level of pedestrian activity limited to employees of light industrial/warehouse uses within the building	• Low noise sensitivity • *Locate light industrial /warehouse uses on Parcel K-2 to serve as a noise buffer for uses on Parcel K-1*	• Low visual sensitivity • *Locate light industrial/ warehouse uses on Parcel K-2 to help serve as a visual buffer for uses on Parcel K-1*	• Requires relatively low level of capital investment • *Include as a possible ground floor use in structure with parking above* • *Include as a potential use on both K parcels*
Massport District Maintenance/ Public Safety	• Low activity focused in the off-peak periods • Local roadway access required/limited need for highway access • *Limit new curb cuts on the Haul Rd. to district maintenance, public safety, and related employee parking*	• Pedestrian activity limited to primarily district maintenance and public safety staff	• Low sensitivity to noise • *Locate district maintenance/ public safety uses on Parcel K-2 to serve as a noise buffer for uses on Parcel K-1*	• Low visual sensitivity • *Locate district maintenance/public safety uses on Parcel K-2 to serve as a visual buffer for uses on Parcel K-1*	• Possible ground floor use in structure with parking above • Requires relatively low level of capital investment • *Include as a potential use on both K parcels*

Appendix D

January 29, 2001 Certificate of the Secretary of Environmental Affairs on the Final EIR of the CFDA

and

December 14, 2001 MEPA Letter, "Special Procedure Update and Clarification of Conditions"

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
251 Causeway Street, Suite 900
Boston, MA 02114-2119

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

BOB DURAND
SECRETARY

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January 29, 2001

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
FINAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME	:Commonwealth Flats Development Area
PROJECT MUNICIPALITY	:Boston
PROJECT WATERSHED	:Boston Harbor
EOEA NUMBER	:11882
PROJECT PROPONENT	:Massachusetts Port Authority
DATE NOTICED IN MONITOR	:December 23, 2000

As the Secretary of Environmental Affairs, I hereby determine that the Final Environmental Impact Report submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00).

Overview: Transportation Impacts and Waterfront Development

This filing, under the Special Review Procedures of the MEPA Regulations, provides Massport's area-wide plan for a 3.4 million square foot (sf) mixed-use development project on 30 acres of Massport-owned land in South Boston, located between the World Trade Center project and the Convention Center site. At least 3 acres of the area are subject to Chapter 91. The project boundaries exclude the World Trade Center and air-rights garage projects, both of which completed MEPA review several years ago, and the Fish Pier and other existing waterfront industrial areas.

Commonwealth Flats is one of three major projects in the South Boston waterfront (the

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other two being the Fan Pier and the McCourt Gateway projects) that are undergoing MEPA review. These projects total approximately 10 million square feet of proposed new development. To address the cumulative traffic impacts of these projects, in September 2000 I convened the South Boston Transportation Summit. This event brought together over 200 public officials, property owners, nonprofit organizations, and local businesses and residents. At the Summit, I heard widespread concerns that without sufficient mitigation commitments in place from public and private entities, the cumulative demand could outstrip the capacity of the district's transportation infrastructure (particularly public transit), both in the short-term and in the long-term. The negative environmental impacts from this imbalance could include traffic congestion that harms existing neighborhoods and the working port, public health harms caused by increased air pollution, and more difficult access to waterfront parks.

The purpose of this Special Review Procedure (SRP) is to lay out a more detailed master plan for the Commonwealth Flats area, in order to give a higher order of predictability to all parties – the public, other public agencies, and potential private investors – and to ensure the orderly review and implementation of environmental mitigation commitments on an area-wide basis. More specifically, the area-wide EIR:

- defines the layout of streets, transit, and public open space;
- establishes a range of heights, densities, and uses for each potential development parcel;
- studies the overall envelope of traffic and other environmental impacts as the plan is built out over the next 10 to 20 years; and
- establishes enforceable environmental mitigation commitments tied to specific levels of impacts.

With the satisfactory completion of MEPA review of the area-wide plan, individual development projects that exceed a mandatory EIR threshold are eligible for a Single EIR process, so long as the individual project is consistent with the approved area-wide plan, it undergoes large project review by the BRA, and the project-specific filing updates transportation issues, as described in earlier Certificates. This presumption is also subject to certain conditions set out in this Certificate.

My March 31, 2000, Certificate on the DEIR required that the FEIR provide additional information regarding the project's transportation impacts and the proponent's proposals for mitigation of those impacts. I specifically required further analysis of transit impacts, parking demand and supply, and impacts on the working port. In my Certificate on the Open Space NPC, I required that Massport respond to comments on the NPC in the FEIR. In general, the FEIR has provided the required information. However, I expect that the proponent's Section 61 Findings and upcoming project-specific filings will make substantially firmer commitments in the following areas, particularly in light of the issues addressed in the Transportation Summit.

My certificate is conditioned accordingly:

1) I am appreciative of Massport's commitment to take leadership in completing a feasibility study for the potential grade separation of the Silver Line at D Street. As described below, Massport has proposed a scope of study and a completion schedule. This study shall have begun (including the initial public meeting) no later than March 15. To ensure that the recommendations of such study are not precluded by other work, as part of the MEPA review of Parcel F-1 Massport will demonstrate that sufficient safeguards have been incorporated into the physical design and the terms of the ground lease.

2) I am also appreciative that Massport has made an initial suggestion toward developing a strategy for addressing the allocation of district-wide transportation responsibilities among the various affected parties. Any such strategy needs to be truly unified: that is, the product of consultation among multiple private parties and public agencies. I look forward to working with the parties as the development of the unified strategy progresses in upcoming months. Massport's responsibilities will include both water transportation and paratransit (shuttle bus) commitments, as previously described in its DEIR.

3) I have significant reservations about the impacts that proposed commercial uses on Parcels K-1 and K-2 might have on maritime industrial uses within the adjacent Boston Marine Industrial Park, immediately to the east. Therefore, the proponent must reexamine the appropriate types and intensities of truly transitional uses allowable on these parcels, prior to the completion of upcoming MEPA review of any CFDA parcels within Chapter 91 jurisdiction (i.e., Parcels G, J, and K).

4) Also prior to the completion of MEPA review of any CFDA parcels within Chapter 91 jurisdiction, the proponent must commit to a specific timetable by which it will implement improvements to the district's truck routes, as identified by the Truck Route Working Group and described in this FEIR. Such implementation measures may be undertaken together with other parties.

Transportation

The Need for a Unified South Boston Transportation Strategy. Because no single party will be able to solve all the transportation challenges for the area, at the Summit I called for the development of a unified transportation strategy, involving the three project proponents, the City, EOTC, other area businesses and landowners, and community representatives. This strategy should:

- favor clean, non-polluting forms of transportation – public and quasi-public transit, water transportation, bicycling, walking – over private automobile use
- ensure that demand is in balance with capacity, both in the short term and the long term.
- include enforceable commitments to implementation measures that provide predictability to developers, investors, existing residents and businesses, and the general public.

The obligation to provide project-specific transportation mitigation should be proportional to the demand attributable to a project, or elements of that project. Finally, the obligation to implement elements of the transportation strategy shall be allocated equitably among the responsible public and private parties.

To provide sufficient transit capacity, Summit participants pointed to a wide range of potential service enhancements, notably:

- Implementation of future phases of the Silver Line beyond Phase I of the Transitway;
- Additional surface bus services, both MBTA vehicles and privately operated shuttle buses accessible to the general public; and
- New water transportation services accessible to the general public.

As a response to my call at the Transportation Summit, in the FEIR, Massport has proposed a methodology for ensuring that each major waterfront project bear its fair share of any necessary transit capacity enhancements. I am pleased that Massport has taken the initiative in this regard. However, the comments I have received reveal that we are still some ways from having a truly unified strategy, reflecting a consensus of the major landowners and the public transportation agencies. Therefore, Massport needs to keep working with its neighbors, the BTD, and EOTC in refining this methodology.

Under this allocation formula, nearly 90% of Massport's responsibility for transit enhancements would be met by its purchase of 8 AITC vehicles to serve Logan Airport. The FEIR asserts that no additional transportation mitigation will be required for the CFDA, beyond this commitment. I am unable to concur with this. As highlighted by the ongoing review of the Logan Environmental Status and Planning Report (EOEA #3247) and the upcoming review of the Airside Improvements Project (EOEA #10458), the issue of maximizing transit access to Logan Airport is of the utmost importance. Therefore, it would be premature to assume that excess capacity beyond that previously described in the AITC filings should be set aside to serve CFDA projects.

Moreover, as the Transportation Summit highlighted, water transportation, buses, and paratransit (shuttle buses) will be a significant part of the district short-term and long-term needs The analysis of EOEA's consultant for the Transportation Summit projected that private bus carriers and shuttles could provide up to 2000 peak hour trips, and that water transportation could provide several hundred additional peak hour trips. Any CFDA project within Chapter 91 jurisdiction will be required to provide significant water transportation facilities and/or operating subsidies, commensurate with district-wide standards. Expectations for support of necessary paratransit should also meet district-wide standards, to be defined in the unified transportation strategy.

Transitway/D Street. During the South Boston Transportation Summit, Massport committed to undertake a study of the potential Transitway grade separation at D Street. In consultation with the MBTA, Massport has developed a proposed scope of services and completion schedule for the initial phase of the study (to be described in a forthcoming letter), which is intended to identify key bottlenecks, including the D Street intersection, that could limit the attainment of full Silver Line service capacity. I anticipate that the first phase process will include, at a minimum, two public meetings, and the ongoing involvement of a smaller technical advisory group that includes the City, neighboring landowners, and representatives of community, port, and environmental interests. This study shall have begun (including the initial public meeting) no later than March 15. To ensure that the recommendations of such study are not precluded by other work, as part of the MEPA review of Parcel F-1 Massport will demonstrate that sufficient safeguards have been incorporated into the physical design and the terms of the ground lease.

Following on the results on the first phase study, a second phase, best led by EOTC or the MBTA, would then study the constructability and potential costs of a D Street grade separation, and analyze the costs and benefits of implementing the grade separation in the near-term and long-term. As part of the shared responsibilities arising out of the Transportation Summit, I fully expect that other major South Boston projects currently undergoing MEPA review, along with Massport, will provide significant assistance toward completing the second phase study in a timely manner.

The comments from the MBTA, BTD, and others show continuing concern about the operation of the D Street intersection without the grade separation. The study should also identify appropriate operational measures for the intersection to ensure the highest possible quality of transit service. In addition, Massport should install the necessary induction loops or other hardware that would enable signal prioritization/preemption as part of the construction of the Connector Road. I expect that Massport's Section 61 Finding will commit to this infrastructure improvement.

Truck Routes. The Truck Route Working Group, in conjunction with Massport, has identified a series of potential improvements to the district's truck routes, aimed at ensuring good truck access to the working port. In each case, implementation will require the active cooperation of other parties. Prior to the completion of MEPA review of any CFDA parcels within Chapter 91 jurisdiction, the proponent should commit to a specific timetable, with identified trigger points, by which it will seek to implement these and other improvements, physically and/or financially. In particular, I want to urge the City to work with Massport to ensure the timely extension of Fid Kennedy Drive, serving BMIP and the North Jetty. The Central Artery / Tunnel project shall ensure that its reconstruction of the rotary at Northern

Avenue will accommodate this action.

Parking. Constraints on parking supply is a key means to reduce traffic and support transit use. Moreover, to support the Silver Line when its Transitway service begins, it will be important to establish transit riding habits, especially in employees new to the South Boston Waterfront. I am pleased that Massport has committed in its FEIR to capping the parking ratio during interim stages at 2.0 spaces / 1,000 sf, and capping the parking ratio at full buildout at 1.1 spaces /1,000 sf. Surface parking is also capped, at 920 total spaces. Massport should continue to make every effort toward achieving the 1.1 ratio as early as possible in its areawide development – particularly once the Transitway begins operation.

TDM measures. As described in previous certificates and the BTD comment letter, as part of future individual project filings, Massport will be updating its area-wide traffic studies – particularly once the Central Artery and the Silver Line have completed construction, and actual figures are available. Project-specific mitigation measures will be determined in individual reviews, within the broad parameters of the unified transportation strategy. As noted in BTD's letter, such measures may include transit pass subsidies and other financial incentives.

Land Use and Density

The FEIR anticipates a mixture of office, residential, hotel, retail, restaurant, and cultural uses on thirteen separate development parcels, totaling up to 3.4 million square feet (s.f.). The FEIR describes the following ranges of development for each type of anticipated use: 1.1 to 1.5 million s.f. office space, 700,000 – 1.1 million s.f. hotel, 800,000 – 1 million s.f. residential, 240 - 300,000 s.f. retail/restaurant, 40 - 60,000 s.f. cultural/entertainment, and 15 - 25,000 s.f. industrial.

The FEIR describes a zoning-like set of maximum development standards for each development parcel, including allowable uses, height, and density. As described in the DEIR Certificate, for an individual project to enjoy the presumption of a Single EIR, it shall comply with all such parcel-specific standards, and the aggregate CFDA-wide development shall remain within the maximum envelope of overall land uses.

Two specific concerns remain in this area. First, the comment letters, including those from Senator Lynch and The Boston Harbor Association, show significant reservations about the impacts that proposed commercial uses (or a major parking garage to serve commercial uses) on Parcels K-1 and K-2 might have on maritime industrial uses within the adjacent Boston Marine Industrial Park, immediately to the east. I share those reservations. Therefore, the proponent must reexamine the appropriate types and intensities of truly transitional uses allowable on these parcels, and appropriate controls that would avoid or minimize and mitigate all impacts on the

working port, prior to the completion of upcoming MEPA review of any CFDA parcels within Chapter 91 jurisdiction (i.e., Parcels G, J, and K).

Second, a key part of project-specific MEPA reviews in South Boston has been demonstrating consistency with the BRA's district-wide planning. A cornerstone of that planning has been Mayor Menino's stated goal of at least one-third of all development being residential uses, and no more than one-third being office use. For example, during the recent review of the Municipal Harbor Plan, the Fan Pier project committed to 38% of its total buildout as residential. As currently described, the aggregate buildout of CFDA could exceed the City's 33% office buildout target, and it would fall below the 33% residential target. As part of the joint BRA/MEPA reviews of upcoming CFDA projects, and pursuant to Massport's responsibilities under Executive Order 385, I fully anticipate that the proponent will continue to work with the City to satisfy its district-wide land use goals (notwithstanding Massport's assertion in the FEIR that it is not subject to Boston zoning).

Open Space

I note that, despite the extensive comments received, Massport's open space planning is not much altered since the ENF. I expect that the parcel-specific filings will describe in greater detail the project-specific open space that will be provided. I anticipate that, as proposals are more fully developed, the open space proposals will closely match the proposed uses for their sites; for example, parcels that are developed for residential use will abut open space appropriate for residences, such as tot lots or basketball courts.

Chapter 91 MOU

I received a number of comments regarding open issues in the draft Ch. 91 Memorandum of Understanding between Massport and the DEP. As stated in my last NPC Certificate, I continue to believe that the ongoing DEP/Massport review process for that document is the appropriate forum for resolving outstanding issues related to the MOU.

The proponent and state agencies should forward copies of their Section 61 Findings to the MEPA Office for completion of the file. The proponent should notify the MEPA Office when construction commences, as required by Section 11.08(9) of the MEPA Regulations, and if the project should change, in accordance with Section 11.10 of the MEPA Regulations.

1/29/01
Date

Bob Durand

cc: CA/T Environmental Oversight Committee
Commenters on DEIR

Comment received:

1/19/01	Adaptive Environments
1/22/01	Division of Marine Fisheries
1/22/01	Office of Coastal Zone Management
1/22/01	Massachusetts Convention Center Authority
1/23/01	Massachusetts Bay Transportation Authority
1/23/01	Boston Transportation Department
1/23/01	Hill & Barlow
1/23/01	Metropolitan Area Planning Council
1/23/01	Department of Environmental Protection
1/25/01	Conservation Law Foundation
1/26/01	Boston Redevelopment Authority
1/29/01	Boston Environment Department
1/29/01	The Boston Harbor Association

BD/LER/lr

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December 14, 2001

Mr. Lowell L. Richards, III
Chief Development Officer
Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128

Re: Commonwealth Flats Development Area – Special Procedure Update and Clarification of Conditions – EOEA #11882 and #12519

Dear Mr. Richards:

In Secretary Durand's certificate on the Final Environmental Impact Report (FEIR) for the Commonwealth Flats Development Area (CFDA) (EOEA #11882), he set forth four specific conditions for additional actions or information on the part of the proponent, the Massachusetts Port Authority (Massport). I have reviewed your letter of June 26, 2001, updating the MEPA Office on the status of those four conditions, and additional materials that you have provided since then, including the "Final Northern Avenue Waterfront Development Plan," dated August 1, 2001 (the WDP), and a memo dated December 5, 2001, providing information on truck routes. As described below, I find that all four conditions have been satisfied. I encourage Massport to continue working closely with the MEPA Office, the MBTA, the City of Boston, and other property owners and interested parties, to ensure the timely implementation of these and other measures.

Silver Line/D Street grade separation. As required by the FEIR certificate and described in your June 26 letter, in March 2001 Massport began work on a feasibility study of the potential increase in Silver Line capacity that could be realized by grade separation at D Street. Massport convened a Working Committee to advise the project team on the study. I understand that the draft of the study report has been released to the Working Committee, that an executive summary was presented at a public meeting in South Boston on November 20, 2001, and that the full study report will be finalized shortly. This satisfies the condition of the FEIR certificate. I strongly encourage Massport to continue working with the MBTA and other parties to carry out the report's recommendations for next steps.

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Public Transit. The FEIR certificate highlighted the need for further work on a strategy to allocate district-wide transportation responsibilities among the various affected parties. Your June 26 letter described a range of monitoring and transportation demand management (TDM) measures being undertaken by Massport. Since that date, the FEIR certificate on the Fan Pier project (EOEA #12083) has modified the formula contained in the CFDA FEIR as follows: "50% of non-airport capacity on the Silver Line should be treated as district-wide public transit, to be allocated prorata, and the balance should be treated as additional capacity provided by Commonwealth Flats [CFDA] as project-specific mitigation."

The Fan Pier certificate also noted that DEP has been developing a consistent approach for determining the baseline level of water transportation commitment that will be required for the Chapter 91 licensing of Boston Harbor projects. EOEA anticipates that under this approach, projects will contribute to the district-wide water transportation system on a level basis, regardless of whether or not facilities are located on their own sites.

Transitional Uses on Parcels K-1 and K-2. As required by the FEIR certificate, Massport has reexamined transitional uses on Parcels K-1 and K-2, and it has described the results of that reexamination in the WDP, which was submitted to DEP on August 1, 2001. The WDP modified the uses previously allowed under the FEIR: housing is now prohibited on both parcels, maximum heights range from 100 to 140 feet, and more stringent performance standards have been defined for ground floor uses and vehicle circulation. The WDP was approved by DEP in September 2001.

Truck Routes. As required by the FEIR certificate, the December 5, 2001 memo describes in detail a set of specific truck route enhancements that would provide better access to waterfront industrial activities. As the memo notes, all of these connections lie partially or entirely outside of Massport-owned land. Hence, full implementation will require the cooperation of other parties, including the City of Boston and the federal government. Although this memo satisfies the condition of the FEIR certificate, I strongly encourage Massport to continue working with the City and other parties to carry out these measures in a timely fashion. All future CFDA filings must contain an update on the implementation status of the truck routes enhancements.

Please do not hesitate to contact me or Bill Gage if you have any further questions about this matter.

Very truly yours,

Jay Wickersham
MEPA Director

cc: Tom Skinner, CZM
Maeve Vallely-Bartlett, EOEA
Pam Harvey, Sharon Pelosi, DEP